

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**

**IN RE: VALSARTAN PRODUCTS  
LIABILITY LITIGATION**

**CIVIL ACTION NUMBER:**

**19-md-02875-RBK-KMW**

**STATUS CONFERENCE  
VIA REMOTE ZOOM  
VIDEOCONFERENCE**

Mitchell H. Cohen Building & U.S. Courthouse  
4th & Cooper Streets  
Camden, New Jersey 08101  
May 3, 2021  
Commencing at 10:00 a.m.

**B E F O R E:**

**SPECIAL MASTER THE HONORABLE  
THOMAS I. VANASKIE**

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Larry MacStravic, Courtroom Deputy

1 (PROCEEDINGS held remotely via Zoom videoconference before  
2 Special Master The Honorable Thomas I. Vanaskie at 10:00 a.m.)

3 JUDGE VANASKIE: Good morning, everyone.

4 MR. GOLDBERG: Good morning, Your Honor.

5 JUDGE VANASKIE: Good to see you all.

6 MS. COHEN: Good morning.

7 JUDGE VANASKIE: Good morning. Thank you for  
8 accommodating the change in schedule from last Wednesday to  
9 today. And we'll get started.

10 I have the agenda letters from last week and we will  
11 follow along the agenda letters. I have a couple of questions  
12 I would like to ask with respect to the motion to seal. I've  
13 been through most -- I've been through it all. I'm close to  
14 making a decision. I just have a couple of questions that it  
15 would be helpful to have answered as I make my final decision  
16 on the individual documents, the 29 or so documents that are at  
17 issue on that particular motion.

18 We have the motion for a protective order that's been  
19 filed by ZHP, and I intend to ask a couple of questions. But  
20 we'll start with the agenda letter. And I'm following along  
21 the plaintiffs' agenda letter in terms of the order of matters  
22 to cover.

23 And the first issue is the plaintiffs' request for Mr.  
24 Chen's custodial file.

25 I do want to say, of course, you know, follow the same

1 protocol. Unless you're speaking, please mute your device; and  
2 if you need to be heard, just let me know. And we'll get  
3 started.

4 Camille, our court reporter, is here. With that said,  
5 let's proceed.

6 So, Mr. Slater, you've made this request for the  
7 custodial file of Mr. Chen. That had been a matter that I  
8 understand, and I'm sure I'll be corrected if I'm wrong, that  
9 Judge Schneider deferred ruling on or at least did not require  
10 the production of the custodial file previously. You've  
11 submitted to me quite a lot of information in support of that  
12 request. I didn't know if there's other matters that you  
13 wanted to say with respect to your request for the custodial  
14 file.

15 MR. SLATER: Thank you. Thank you, Your Honor.

16 I'll just really just focus in and reiterate that I  
17 think that we've established significant direct involvement by  
18 Mr. Chen in highly relevant matters, including a series of  
19 meetings as to which our understanding is no notes exist from  
20 the people who attended, based on Mr. Min Li's deposition. And  
21 we also, obviously, have the very important matter of this  
22 email that we learned about just in the last week or so  
23 indicating that ZHP knew that there was NDMA contamination of  
24 its valsartan at least as of July 2017 and I think that we  
25 should have the right to see all of his documents ultimately,

1 this is a steppingstone to his deposition, but let's start with  
2 the custodial file.

3           Currently, his deposition is scheduled. We know the  
4 defense intends to move. We will have a vigorous opposition to  
5 that motion, as I'm sure you can imagine. But I think that  
6 you're right, Judge Schneider said he wasn't going to order it  
7 at the time but wasn't prejudging what would be developed in  
8 the record as we went forward, and we think we've established a  
9 strong record to obtain that custodial file.

10           Thank you.

11           JUDGE VANASKIE: All right.

12           Mr. Goldberg, will you be addressing this issue?

13           MR. GOLDBERG: I will, Your Honor. And I'm going to  
14 address it in some detail because this is a very significant  
15 request for the client, for our client, ZHP. And so I'm going  
16 to ask for the Court's indulgence for a few minutes to get into  
17 that detail. And I'm going to even put up a few documents on  
18 the screen that we'd like to share with the Court and at the  
19 same time, my colleague, Jessica Priselac, will email you the  
20 documents so that you have them.

21           Let me first get --

22           JUDGE VANASKIE: May I interrupt you for a second, Mr.  
23 Goldberg, with a question. And the question is whether I  
24 should defer hearing this until you submit the documents and  
25 ask of your availability say Wednesday or Thursday of this week

1 because it is a significant issue and I do have a very  
2 comprehensive record submitted by Mr. Slater with multiple  
3 exhibits and I know it just came up last Tuesday, I suppose, in  
4 terms of written submission. It may have come up in your  
5 discussions, I understand that. But I don't want to preclude  
6 you from making a complete showing, if you think you can make  
7 that now, emailing documents to me which I won't be able to  
8 review. I hope you understand that.

9 MR. GOLDBERG: Your Honor, these are just a few  
10 demonstrative exhibits --

11 JUDGE VANASKIE: Okay.

12 MR. GOLDBERG: -- in our view to help this argument.

13 In our view, at a minimum, briefing on this issue is  
14 required. That's what Judge Schneider ordered. This Court has  
15 not yet set a briefing schedule for this, for this request.  
16 Mr. Slater's request was made by way of a letter. What we'd  
17 like to do is share with Your Honor some of the salient points  
18 that demonstrate that Mr. Chen's custodial file is not  
19 necessary in this case, to give you that backdrop and to  
20 request at a minimum that the Court provide briefing on the  
21 issue which we would be happy to submit. But as I think you'll  
22 see, Your Honor, this issue requires a full vetting. If the  
23 Court is not inclined to rule in defendant's favor, we want to  
24 have that opportunity to submit that briefing.

25 But if Your Honor would indulge me for a few minutes,

1 I can show you those demonstrative exhibits.

2 JUDGE VANASKIE: Certainly. You proceed.

3 MR. GOLDBERG: And let me just start by way of saying  
4 that the backdrop for this request is that Mr. Chen is the  
5 founder of ZHP. ZHP is a global company with more than 7,000  
6 employees worldwide. It has dozens of affiliates and  
7 subsidiaries. It manufactures and distributes dozens of  
8 products, not just API and finished dose, around the world.  
9 Mr. Chen is the general manager. He oversees the company, the  
10 7,000-person company. He's been in that role since its  
11 inception, which is more than 20 years ago. And while the  
12 issue of the impurity in valsartan is important, it affected  
13 only those involved in the manufacture of valsartan at ZHP, and  
14 the record adduced to date is very clear that Mr. Chen is not  
15 so involved.

16 And I'll share with Your Honor a few of the slides  
17 that I wanted to show you.

18 And I guess I would ask Mr. MacStravic, if you could  
19 allow me the ability to show a document, to share my screen?

20 JUDGE VANASKIE: Okay, Larry?

21 THE COURTROOM DEPUTY: I should go ahead and try it.

22 JUDGE VANASKIE: All right.

23 MR. GOLDBERG: It's still saying host disabled  
24 participant's screen share.

25 MR. SLATER: Can I ask a question while we do this --



1 JUDGE VANASKIE: Certainly.

2 MR. SLATER: -- as to whether or not the information  
3 that we're about to see is what was found in the brief that was  
4 submitted to the Court last week?

5 I'm sure it's not a surprise, Judge, that from  
6 plaintiffs' perspective, this was fully briefed for the Court  
7 in our agenda letters. We think that's more than sufficient.  
8 That's how the Court has been addressing these custodial  
9 productions throughout this litigation. If they are now going  
10 to make a presentation of things that aren't in the letters  
11 submitted, you know, we obviously object to it.

12 We'll defer to whatever Your Honor says, but we have a  
13 real problem with them dropping this on us today, especially  
14 when they asked for the Zoom conference the other day and  
15 didn't tell us the reason was because they were going to want  
16 to do this. So we have some concerns.

17 JUDGE VANASKIE: I understand, Mr. Slater. I will  
18 allow this presentation to be made.

19 MR. GOLDBERG: Thank you, Your Honor.

20 Your Honor, the plaintiffs -- and you should have  
21 these documents, Your Honor, but the plaintiffs made a number  
22 of assertions in their letter, seven in particular, to argue  
23 that Mr. Chen is materially involved in the case, and what we  
24 provided to Your Honor are excerpts of testimony to show you  
25 that Mr. Chen is not materially involved in the case.

1           For example, number one, plaintiffs say that he was  
2           the apparent architect of the effort by ZHP to use the zinc  
3           chloride process. Ms. Ge, the head of quality assurance, said  
4           that he is in top management, he is in charge of the strategic  
5           planning or management of the company. As for the daily tasks  
6           of change, control or deviation investigation, he never was  
7           involved.

8           Plaintiffs argue that after June 2018 disclosure of  
9           the contamination to the FDA, Mr. Chen took control of the  
10          crisis. Ms. Ge testified that for the NDA impurity  
11          investigation, Mr. Chen never got involved in the root cause  
12          analysis, the root cause investigation or creation of the  
13          deviation report. He never got involved.

14          They argue that Mr. Chen regularly visited the United  
15          States to oversee the ZHP marketing operations. The testimony  
16          is that he came to ZHP once or twice -- or to the U.S. once or  
17          twice a year. Again, he is the global -- the head of a global  
18          company of 7,000 employees.

19          They argue that Mr. Chen has involvement in FDA  
20          inspections. They cite to a few inspection reports where Mr.  
21          Chen is identified as attending. Mr. Chen, as the head of the  
22          company and the highest-ranking official, is required to attend  
23          and he attends the opening meeting and the closing meeting, but  
24          he is not a subject matter specialist that walks through the  
25          inspection with the FDA. And that is clear. And, in fact,

1 this week they will be deposing the head of our regulatory  
2 affairs department and she will testify accordingly. And if  
3 Your Honor would like to have it today, we'd be happy to submit  
4 an affidavit from Ms. Lin.

5           They say that Mr. Chen knew about the contamination  
6 prior to July 2017. Ms. Ge again testifies he's not involved  
7 in the day-to-day activities of the API or finished dose  
8 manufacturing.

9           They go on, and I'll jump to Number 7, that he was  
10 involved in every point in the process, has direct knowledge  
11 from all corners of the company, and Mr. Min Li, who's head of  
12 one of the quality functions at ZHP says, such detail and  
13 technical details were never discussed with Mr. Chen.

14           The reality, Your Honor, is Mr. Chen, like any other  
15 CEO of a company of 7,000 employees, gets information reported  
16 up and that's it. He doesn't report down. He doesn't provide  
17 information down. Of course he understood what was happening.  
18 Of course he attended some meetings. That's what CEOs do. But  
19 that does not mean that he has information that would be  
20 materially additive to this case, which is why I want to show  
21 Your Honor the next document to really bring home the point.

22           Your Honor, this is an analysis of Mr. Chen's -- of  
23 the deposition exhibits shown to date. This is a very  
24 important document for Your Honor to focus on.

25           They've now had the deposition of 11 ZHP party

1 witnesses, nine of whom provided 30(b)(6) testimony. That's  
2 been 115 hours of testimony, not including the 75 percent  
3 multiplier for translation. They've shown the witnesses 338  
4 exhibits. Out of the 367,000 documents that have been produced  
5 from 80 ZHP custodians, they found 338 to be the most critical  
6 to show witnesses to get their testimony to put their case  
7 together. Of those 338, only 13 mention Mr. Chen. Of those  
8 13, six are email that mention Mr. Chen. None of them are  
9 email that he sent to any of the 80 custodians. These are the  
10 custodians they identified based on the core discovery. These  
11 are the custodians that have been designated as 30(b)(6)  
12 witnesses. He has not emailed any of them because if he did,  
13 it would be in their custodial files. Only two of the 13 email  
14 exhibits were sent to him, just two. Two of them were email  
15 that he was copied on, one of them was an email that he was  
16 blind copied on, and one an email that he received -- or that  
17 had an exhibit that mentioned him but was not sent or received  
18 by him. And you can see the minuscule percentages of either  
19 the exhibits or even the production that these documents amount  
20 to.

21           The other seven deposition exhibits that mention Mr.  
22 Chen are zero -- none are documents he authored, not  
23 surprisingly, because he's the CEO of a 7,000-person company.  
24 Three he's mentioned in organizational charts. Of course he's  
25 at the top. One is a Power Point that notes him as a founder,

1 two are EU or FDA inspection reports that note his role as the  
2 general manager, and one is a memorandum addressed to him.

3           Again, the documents demonstrate that Mr. Chen's  
4 custodial file would not be additive to this case because if  
5 there was a materially relevant document in this case with Mr.  
6 Chen on it, it would have been identified within the custodial  
7 files of the 80 ZHP party custodians.

8           The email -- Mr. Slater referred to a memo from 2017.  
9 Mr. Chen was not sent that memo. He's not a recipient of that  
10 memo.

11           In our view, the production of Mr. Chen's custodial  
12 file clearly would not be additive to this case and this Court  
13 should not grant that kind of a production when it is so  
14 patently, at a minimum, duplicative.

15           The last document that I wanted to show you, Your  
16 Honor, presents a unique issue. It makes Mr. Chen unique among  
17 all of the other custodians at ZHP, and this is why a full  
18 brief on this issue is required.

19           Unlike the other custodians at ZHP, Mr. Chen is an  
20 official in the People's Republic of China Communist  
21 Government. And we've already covered with Your Honor a number  
22 of the state secret issues, but Mr. Chen holds various roles in  
23 different government-sponsored agencies and in the government  
24 in China. He's the deputy to the 13th National People's  
25 Congress, he's a member of the Standing Committee of the 16th

1 People's Congress of Linhai City, he's the vice president of  
2 the Zhejiang Chamber of Commerce and so on.

3           What this means is that Mr. Chen's custodial file is  
4 likely to be encumbered with a large amount of documents that  
5 are subject to the state secret rule that we've discussed and  
6 in ways that we haven't discussed them because we've only  
7 discussed the state secret rule as it applies to the documents  
8 that are at issue in this case. Because so few documents at  
9 issue in this case are likely to pertain to this case in Mr.  
10 Chen's custodial file, the vast majority are likely to be  
11 irrelevant, and then on top of that, subject to state secret  
12 rules. And this issue is -- this issue is of paramount  
13 importance to ZHP and to Mr. Chen because it results in  
14 potential exposure under the Chinese state secret rules which  
15 have to be fully vetted before the production of any custodial  
16 documents by Mr. Chen.

17           So, Your Honor, we think the issue of the production  
18 of his custodial file is premature. We think these issues need  
19 to be fully vetted. As Your Honor can see, the assertions in  
20 plaintiffs' letter about his involvement are contradicted by  
21 the facts of record, they're contradicted by the normal  
22 practice of general managers and CEOs in global companies with  
23 thousands of employees, they're contradicted by the documents  
24 that have been produced to date that plaintiffs have relied on,  
25 and there's the added impediment of great significance under

1 China law due to his role with the Chinese government.

2 And so at a minimum we would ask Your Honor for  
3 additional briefing on this issue, but we think Your Honor  
4 could conclude it by ordering, as Judge Schneider did, that the  
5 production of the custodial file is not warranted.

6 JUDGE VANASKIE: All right. Thank you.

7 Mr. Slater.

8 MR. SLATER: Thank you, Judge.

9 I'll try to take these arguments one at a time.

10 The first part was the chart pulling out things we  
11 said in our brief which, as Your Honor recognized, we didn't  
12 just make statements, we supported what we said with the  
13 record. And I'll start with the first example because it's  
14 probably an easy one to use to swipe away the rest of that as  
15 having any probative value here of any significance.

16 The first quote that they listed on their Power Point  
17 said something about him being the architect of the zinc  
18 chloride process, and we know from the documents that we had,  
19 and we presented this to the Court, he was the one who  
20 continually was pushing to lower the cost so much that they  
21 could capture all of the market share. That was the strategy  
22 for valsartan. That's why they went to the zinc chloride  
23 process. And there are emails that reflect that, for example,  
24 he had a conversation with, I believe it was Hie Wang who runs  
25 their U.S. distributor, where Mr. Chen, apparently, during one

1 of his United States visits, was talking about them -- about  
2 ZHP's subsidiary Solco needing to drop the prices even more so  
3 they didn't have a problem like they did with losartan.  
4 Apparently, they didn't drop the prices enough and didn't  
5 capture enough market share. So he had direct supervisory  
6 involvement and direction on the strategy.

7           Now, what do they -- what does ZHP put in their Power  
8 Point to refute that, that he's the architect of the zinc  
9 chloride process? Testimony from a quality assurance person  
10 who would have had absolutely no involvement with that strategy  
11 and it says, the quote from her deposition, as I took notes,  
12 said he wasn't involved in the deviation investigation. That's  
13 not even the subject of what we were talking about in what they  
14 quoted. I watched Ms. Ge's deposition. She acknowledged she  
15 had no idea what Mr. Chen actually knew. She attended a few  
16 meetings with him for which she took no notes, and there was no  
17 testimony anybody else took notes, and she certainly doesn't  
18 know who else he spoke to, what other meetings he attended,  
19 what else he knew. How could she know? It would be  
20 impossible. So the idea that that testimony that they put up  
21 in the right-hand column of their Power Point in any way  
22 refutes what we've stated in our brief is just not accurate,  
23 and I've just given you an example showing the actual examples  
24 they gave are completely off-point and not probative.

25           Now, the next argument that counsel made that they



1 looked at the statistical analysis of deposition exhibits used  
2 to date.

3           Number one, we already have an order from this Court  
4 that we're deposing Mr. Chen in about a month. So we didn't  
5 need to establish a record to get his deposition. If ZHP wants  
6 to move to try to prevent that deposition, they have the burden  
7 and I don't see how they can make that burden on this record.  
8 But let's go further.

9           We don't have Mr. Chen's custodial file. I would  
10 think that would explain a lot of why we don't have his  
11 documents because when we go into the next point, we now know  
12 that a very important document, an email sent to a bunch of  
13 high-level people in the company which confirms that ZHP has  
14 not been truthful with the world regulatory authorities since  
15 this came out, and that they were hiding the contamination for  
16 approximately a year, we believe even longer, we know that now,  
17 we have a hard document that shows that, which we believe  
18 accidentally was produced, and we can go through that, we've  
19 gone through that in our letter, it was never intended to be  
20 seen by us. And Your Honor's very familiar with ESI and what  
21 can be done and why it is that when they renamed the date of  
22 the document with the copy date, that probably evaded the net  
23 that was being cast to pull those documents out of the  
24 production before we saw it. This is disturbing but it's very  
25 straightforward.

1           So what else do we know about that email? Every  
2 single other person that received it, there's no indication  
3 they received it. It wasn't in their custodial files and they  
4 weren't listed as duplicate custodians. We also know the  
5 report that was written following that email and as a result of  
6 that email does not exist as of today. Nobody's been able to  
7 produce it.

8           We spoke with ZHP in a meet and confer Friday at 4:00  
9 and they told us as of now they haven't been able to locate  
10 that report, which Mr. Li acknowledged the spreadsheet we found  
11 out about it in said that he -- he said, don't do any more work  
12 on it, don't issue it because of the sensitive impurity. That  
13 was in April of 2018, two months before Novartis forced ZHP to  
14 disclose the contamination.

15           So when counsel continuously said there's no documents  
16 in the production implicating Mr. Chen's involvement, that's  
17 our point. We already know, we have hard evidence on the core  
18 issue in this whole case, that documents seem to have been  
19 deleted from the production and we're now going to be asking  
20 for more custodial productions which, based on our meet and  
21 confer, ZHP's not likely to resist.

22           Finally, this government official argument is I'll use  
23 the word disturbing again. When ZHP chose to sell valsartan in  
24 the United States, they didn't tell the FDA, by the way, if  
25 there's a problem, our top officials won't be available because

1 of a Chinese state secret issue. They came into the United  
2 States and sold their product, took massive profits from that,  
3 took the market share. There's the reason ZHP is the heavy in  
4 this because of Mr. Chen's strategy to drop the price so much  
5 that they could capture the world market share.

6 To say that because he's a government official that  
7 somehow we don't get the custodial production, they already  
8 made all their arguments and Judge Schneider rejected them and  
9 let us have the deposition and said I'll wait on the custodial  
10 file. Whatever his reasoning was, there's a record now that's  
11 very strong that shows he had direct involvement, he's not a  
12 figurehead, direct communications with people, yet none of  
13 those people who were deposed, Min Li, Jucai Ge, and I can tell  
14 you Linda Lin, who I'm deposing tonight is not going to know  
15 either, what Mr. Chen knew, when he knew it, what decisions he  
16 made, who he spoke to. Because it's a big organization, he's  
17 the one who knows. He knows what he knew and when he knew it.  
18 He's going to need to answer for this company, and the first  
19 step to that is going to be his custodial file.

20 So we ask Your Honor, number one, to grant our request  
21 for the custodial file; and two, to reject any request by ZHP  
22 to further encumber this issue or delay this issue with this  
23 amorphous request for briefing. We briefed it. Our agenda  
24 letters are detailed, this is how we produce these -- bring  
25 these issues to the Court. There's absolutely no need to have

1 a briefing schedule on this when we're supposed to depose this  
2 man in a month.

3 Thank you.

4 JUDGE VANASKIE: All right. Mr. Goldberg.

5 MR. GOLDBERG: Thank you, Your Honor. Just a few  
6 points in response.

7 First, Judge Schneider never decided that Mr. Chen  
8 should be deposed. What he said was put a date on the  
9 schedule, then you can file a motion for protective order based  
10 on the testimony to demonstrate that the deposition should be  
11 precluded, but he never ordered the deposition.

12 Second, he did deny the production of the custodial  
13 file, based on the same arguments that I'm making today, he  
14 decided back in October of 2019.

15 Third, this issue has not been briefed. Plaintiffs  
16 did not raise the issue of Mr. Chen's custodial file until a  
17 week ago Friday. Since October of 2019 until a week ago  
18 Friday, this issue had not been renewed; and then they only  
19 renewed it in an email without any support. Then they filed  
20 their letter last week with what they claim supports their --  
21 their renewed request. The testimony shows that the renewed  
22 request is insupportable; but if Your Honor takes a careful  
23 look at their documents, Your Honor's going to see that they do  
24 not support the request.

25 An important point here is that the second

1 highest-ranking official at ZHP is going to be deposed and his  
2 custodial file has been produced. His name is Jun Du. And  
3 Judge Schneider really focused on Jun Du in place of Mr. Chen  
4 in ways at plaintiffs' urging because Mr. Du is in the United  
5 States. And Mr. Du is someone who's the second highest-ranking  
6 official at ZHP and he is also the highest-ranking official at  
7 the various U.S.-related subsidiaries.

8           The point about the documents is really persuasive.  
9 They had 80 custodians. Any communication that Mr. Chen had  
10 with any of those 80 custodians would be produced and that  
11 includes Mr. Du, the second highest-ranking official. The fact  
12 that they've only identified 13 documents with mentioning him  
13 to show in their key depositions on the issues of testing, on  
14 the issues of manufacturing, on the issues of the quality  
15 control, on the issues of the process change, and they haven't  
16 -- they haven't shown that Mr. Chen has had any material  
17 involvement demonstrates that the custodial file would not be  
18 additive to this case.

19           There's nothing that's going to be in the custodial  
20 file that isn't -- that's material to this case that would not  
21 have already been produced among the 80 custodians, 80. That's  
22 more than any other defendant in this case by far. That's all  
23 of the people that were involved in the core discovery and it's  
24 all of the 30(b)(6) witnesses.

25           The plaintiffs are mischaracterizing this, Your Honor,

1 and it's not surprising because this is what plaintiffs do,  
2 this 2017 document. First of all, it refers to a different  
3 drug called irbesartan. That's the subject of another  
4 litigation in this matter. And the custodians they've  
5 identified are custodians relating to irbesartan, a different  
6 drug, but it's important for Your Honor to know that ZHP fully  
7 intends to cooperate with plaintiffs with respect to those 15  
8 document requests that they've issued, including those  
9 additional custodians, and we had a call with them on Friday to  
10 walk through each of those. ZHP has addressed each of those  
11 and, as it has for the entire two and a half years we've been  
12 litigating, intends to cooperate on all of those requests and  
13 to work with plaintiffs on pulling together the information  
14 they're seeking. Now, some of it may already be produced, some  
15 of it may be subject to further negotiation, but those  
16 custodians we intend to produce. And that's another reason for  
17 Your Honor to withhold the Baohua Chen custodial file because  
18 we're giving them the material information or the information  
19 that they think is material. But that document has no  
20 connection to Mr. Chen, he didn't receive it, and it pertains  
21 to a different drug.

22           So, Your Honor, our view is still that this issue is  
23 premature but we think we've provided Your Honor with the  
24 information necessary for Your Honor to rule, if you needed to,  
25 that the custodial file should not be produced at this time.

1 JUDGE VANASKIE: All right. So just to be clear on  
2 this, your reference to production of custodial files, et  
3 cetera, that are being sought by the plaintiffs are those  
4 requests that are made at Page 24 of Mr. Slater's letter of  
5 April 27th?

6 MR. GOLDBERG: That's correct, Your Honor. In fact,  
7 what -- and I'm sorry, I'm just trying to find something for  
8 Your Honor. What we intend to do is to re-interview those ten  
9 custodians. There are four new custodians they requested; we  
10 intend to be interviewing those. We intend to be doing a  
11 collection -- review and collection and production of documents  
12 pertaining to those new custodians. And there's one custodian  
13 that we have to discuss with plaintiffs, her name is Maggie  
14 Kong. We think that that request isn't warranted but we'll  
15 discuss that with plaintiffs. We don't think that that issue  
16 is ripe at this time. But what we are confident in is that we  
17 will be providing to plaintiffs the information that they think  
18 is material. We don't agree with it but they want the  
19 additional discovery that they think is material and so we're  
20 willing to cooperate. That's different than Mr. Chen's  
21 discovery which is not material. But we think by -- you know,  
22 we think the Court should certainly take into consideration the  
23 fact that the information they think is material is going to be  
24 the subject of further discovery.

25 JUDGE VANASKIE: All right.

1           Mr. Slater, with respect to these -- the requests that  
2 started on Page 24 of your April 27, 2021, letter, should I  
3 defer ruling on the custodial file of Mr. Chen until you see  
4 what's produced?

5           MR. SLATER: No, Your Honor.

6           JUDGE VANASKIE: I knew you'd say no. But why  
7 shouldn't I?

8           MR. SLATER: I'll tell you why. This is obviously --  
9 the case -- the litigation now has taken on a new -- or the  
10 case against ZHP has taken on a new dimension. And I want to  
11 be very clear about something. The people that we've asked for  
12 additional custodial productions from, we've demonstrated, and  
13 that's why we believe ZHP has agreed now to produce them, we've  
14 demonstrated the materiality. That's not a question. We don't  
15 agree Maggie Kong shouldn't have her custodial production  
16 produced. She's actually Baohua Chen's chief of staff who was  
17 the main go-between with everybody. Min Li testified  
18 everything came through her and it looks like she also had  
19 substantive involvement. And, again, this is a way for us to  
20 start to, as best we can, seal the documents. But Baohua Chen  
21 stands as an additional and necessary custodian, and we're a  
22 month from his deposition. So we can't be now waiting until we  
23 see those custodial productions and then we wait and wait and  
24 wait when we've made the showing.

25           And I want to be very clear about something.



1           Number one, Baohua Chen's deposition was granted. We  
2 made the showing and Judge Schneider said to the defense, if  
3 you want to move for a protective order later, you can do that,  
4 but the deposition was in the order as a deposition. That's  
5 why it has a date on the calendar, number one.

6           Number two, again, you're hearing these arguments  
7 about what we have in the production. The production by ZHP is  
8 not trustworthy. We've proven that on a very material issue.  
9 And when you look at that document, I want to be very clear,  
10 Your Honor, because we gave you the actual deposition testimony  
11 where Min Li testified to what the document said, it says very  
12 clearly, without any caveat, without any question of maybe or  
13 anything, they were looking at irbesartan, they were looking at  
14 what they thought was a nitrosamine impurity that they were  
15 finding in irbesartan based on what they were doing with the  
16 production process. And in the email it says, this is very  
17 similar to the NDMA that is being formed in the valsartan when  
18 we quench it with sodium nitrite, which as Mr. Li acknowledged,  
19 that is the root cause for why there's NDMA in the valsartan.  
20 That statement was a factually true, scientifically true  
21 statement nearly a year before ZHP claimed they first heard  
22 about this. We know that for a fact. The email very clearly  
23 says it. So when they -- the defense keeps saying we have  
24 already produced what we've produced and you don't see this,  
25 you don't see that, again, that's our point because the

1 recipients of that email didn't have it in their custodial file  
2 and they were not listed as duplicate custodians.

3           So every time ZHP says, look at our production, my  
4 response is exactly. That's why we need more custodial  
5 productions, that's why we need the others we've asked for, and  
6 Baohua Chen clearly was involved. He had direct substantive  
7 involvement. He was not a figurehead. I don't think we really  
8 would need to have to show more than that; but then Min Li says  
9 he took control of this processing, was running all of these  
10 meetings. And there's only one person in the world that knows  
11 everything that he was told and everything he told others, and  
12 that's Baohua Chen.

13           JUDGE VANASKIE: Anything else, Mr. Goldberg?

14           MR. GOLDBERG: Your Honor, the production of Mr.  
15 Chen's custodial file, if it were to ever be ordered, most  
16 certainly should not be ordered before the production of this  
17 additional information. If plaintiffs think that Mr. Chen is  
18 somehow connected to this additional discovery we're going to  
19 provide, his deposition has to be rescheduled to allow for the  
20 production of this information. And we've asked for the  
21 rescheduling of his deposition to account for the testimony  
22 that needs to happen. But one thing's for sure, should Mr.  
23 Chen ever be deposed in this case or should his production of a  
24 custodial file ever be required, it has to come after all of  
25 the testimony that would be pertinent and all of the documents

1 that would be -- that would establish cause, because right now  
2 there is no cause established. But we would not want to have  
3 to have Mr. Chen be brought back for a second deposition based  
4 on after-produced documents.

5           This issue has only surfaced, the request for his  
6 custodial file, after two and a half years. Had we not asked  
7 to reschedule the deposition, plaintiffs likely would not have  
8 requested his custodial file. But at a minimum, the production  
9 of a custodial file should await some real evidence connecting  
10 Mr. Chen to any material issue in this case. Simply overseeing  
11 the company and being reported to about important issues in the  
12 case does not establish that he would have information unique  
13 and additive for this case.

14           JUDGE VANASKIE: All right. I am inclined to order  
15 the production of Mr. Chen's custodial file but I will give Mr.  
16 Goldberg an opportunity to submit a letter brief on the issue  
17 of why that still is premature. Based upon what's been  
18 presented to me thus far, it seems to me that he would have  
19 unique material information and had an involvement beyond that  
20 which has been described thus far. Now, I can be persuaded  
21 otherwise, that's clear; but I also am not wanting to delay  
22 this matter interminably while other documents are produced.

23           This disclosure with respect -- I understand the July  
24 2017 email concerns irbesartan, not valsartan, but it is  
25 troubling, and the fact that -- of how the metadata plays out

1 is troubling. So I think we need to get to the bottom of this.

2           So, as I said, I really would like to move this along  
3 but I will give Mr. Goldberg an opportunity -- I consider Mr.  
4 Slater's presentation of April 27th to be the equivalent of a  
5 motion to compel the production of the custodial file of Mr.  
6 Chen and you can now respond. I'll give you to Monday of next  
7 week to respond, Mr. Goldberg. You've already made an  
8 impressive presentation so far, so I don't think you need more  
9 time than that. And we'll issue a prompt ruling on it. We  
10 need to move this matter along.

11           I'm not going to order the postponement of Mr. Chen's  
12 deposition at this time. I'm going to keep that matter under  
13 advisement. But I know that we need to move this matter along.  
14 I'm repeating myself.

15           But the presentation -- I want you to understand that  
16 the presentation that has been made thus far is persuasive.  
17 It's not convincing yet but it is persuasive. And I will  
18 certainly allow you the opportunity, Mr. Goldberg, to convince  
19 me otherwise. So we'll -- as I said, we're not going to  
20 postpone the deposition of Mr. Chen at this time. It is  
21 scheduled. We'll get your submission next -- by no later than  
22 next Monday, May 10th. I know that doesn't give a lot of time,  
23 Mr. Slater, for production, but if I order the production of  
24 Mr. Chen's custodial file, I'll expect it to be produced  
25 forthwith.

1 I understand the state secret argument and the role  
2 that Mr. Chen plays. You certainly have the opportunity to  
3 object to production of documents that are covered by the state  
4 secret law, the Chinese state secret law, and so that issue may  
5 have to be resolved as well. I understand that, too. But I'm  
6 not going to hold up making a decision on the basis of the  
7 Chinese state secret law. I'm going to try to move this matter  
8 along as expeditiously as possible.

9 So anything else on this issue before we move on to  
10 the next one?

11 MR. SLATER: Your Honor --

12 MR. GOLDBERG: Your Honor, I will just say that with  
13 respect to the logistics of producing the documents,  
14 irrespective of the state secret issue, the production of Mr.  
15 Chen's custodial file and that of the other custodians whose  
16 productions we are willing to consider is not going to be  
17 something that can happen just in a matter of a week or two  
18 because the production of this information requires so many  
19 different -- need the involvement of a ESI consultant who needs  
20 to go from Shanghai to Linhai.

21 Remember, Judge Schneider did not require us to  
22 collect his information, so it hasn't been done yet. We need  
23 time to process the information. We need time to review the  
24 information for the state secrets to weed out any state secret  
25 information. We need time to review and -- and remove any

1 documents already produced. And so, you know, while we would  
2 endeavor to do that as quickly as possible, the logistics alone  
3 are an issue. And plaintiffs sat on their hands on this  
4 request. So we should not be penalized because they waited  
5 until last week to make this request. I mean, Your Honor has  
6 to consider that when making this order. They only renewed  
7 this request for his custodial file nine days ago. And so  
8 we're going to need the time to produce this information. It's  
9 just logistically impossible to turn it over without having all  
10 of the technical steps involved.

11 JUDGE VANASKIE: Any response, Mr. Slater?

12 MR. SLATER: I was only going to ask Your Honor, I  
13 just wanted to clarify the dates for when the letters were due  
14 to Your Honor. I think you said that ZHP has a week or did you  
15 say that they'll submit theirs and then we will get our reply  
16 by Monday? I just want to make sure that we just nail the  
17 dates down.

18 JUDGE VANASKIE: No, I said ZHP has until May 10, a  
19 week from today.

20 MR. SLATER: And when should we -- I mean, we'll  
21 obviously, if we have a reply, we'll -- we want to move  
22 expeditiously so we would try to get it to you very quickly. I  
23 would just ask for up to 48 hours.

24 JUDGE VANASKIE: All right. We'll give you 48 hours.

25 MR. SLATER: Thank you.

1 JUDGE VANASKIE: May 12th.

2 MR. SLATER: And then on the last part, I was a little  
3 concerned when counsel walked back. During the argument it  
4 was, we're giving all the custodial files; then counsel just  
5 said, well, we're willing to consider it. I mean, I guess  
6 we'll nail that down later in the argument today with Your  
7 Honor, but I thought that was their argument was they were  
8 giving it to us, now I'm hearing willing to consider. That's  
9 obviously concerning and, you know, we just look forward to  
10 getting this decided.

11 As far as the production issues, I would think that  
12 ZHP, from the moment that we started to discuss this again --  
13 and we didn't sit on our hands. We've been working diligently  
14 and when we felt we had gotten substantial evidence from a  
15 deposition, we brought it right to them, from somebody who's  
16 very close to Mr. Chen, probably as close as anybody we've  
17 deposed in the litigation so far, was Min Li. And he's the one  
18 through whose custodial production we got that email. So we  
19 couldn't have known about it because it had been sanitized from  
20 every other production. And it's in Chinese.

21 So we did what we did as we got to that deposition.  
22 Luckily, we found it. If we hadn't, ZHP wouldn't be before  
23 you, I'll tell you right now, saying, we just want to let you  
24 know we knew about this over almost a year before, at least,  
25 and we just want to make sure no one misses it. They were very

1 happy for us not to know that, but...

2 So when the time comes, if Your Honor does rule in our  
3 favor, we're hopeful that ZHP now knows as of today they better  
4 start getting working on this because they won't have a lot of  
5 time.

6 JUDGE VANASKIE: Well, I am going to direct that ZHP  
7 start collecting, gathering the custodial file of Mr. Chen. I  
8 haven't decided it but I don't want that to be a reason for  
9 more delay. It may take some time, I'm not sure, but I want to  
10 get into the details of that after a final decision is made.  
11 But in the meantime, they certainly should start gathering that  
12 custodial file.

13 MR. SLATER: Thank you.

14 JUDGE VANASKIE: Now, the next issue I have is the  
15 additional discovery that you want to pursue, Mr. Slater,  
16 matters involving this July 27, 2017, email, the Lenovo  
17 ThinkPad issue with respect to Mr. Li, Min Li's cellphone,  
18 missing emails from Peng Dong, those matters that are -- I see  
19 covered at -- I think starting at Page 13 of your April 27,  
20 2021, letter.

21 Where do things stand with respect to that, Mr.  
22 Slater?

23 MR. SLATER: We spoke with ZHP at 4:00 on Friday and  
24 went through each of the issues. I can give you point by point  
25 as to where we stand because as to many of these issues I



1 believe there was agreement and perhaps we can clear up the  
2 custodial production issue now as well as we just talked about.

3 JUDGE VANASKIE: Yes.

4 MR. SLATER: It was our understanding at the time that  
5 ZHP was inclined, with the exception of Maggie Kong, who they  
6 wanted to discuss further with us, Baohua Chen's chief of  
7 staff, that they were inclined to produce those custodial files  
8 and asked us if we had any additional ones we wanted produced  
9 so they could do it, based on what we know now at this time,  
10 one time. And we said that sounds reasonable. And I would  
11 think by the end of today we'll get back to them if there's any  
12 others. We tried to be thorough so I don't anticipate that but  
13 I want to check with our team. So by 5:00 today they'll know  
14 who we're requesting at this time based on what we know.

15 So I think as to the ones we've requested, including  
16 Maggie Kong, they should be ordered. If there's something that  
17 ZHP wants to discuss with us, you know, it's not the end of the  
18 world to discuss for a few more days on her custodial file, but  
19 that is something that we think we need.

20 The next issue was -- that we discussed with ZHP on  
21 Thursday was the additional search terms that we request to be  
22 run and they agreed. They agreed they would run those terms on  
23 the custodial files already produced, and that to the extent  
24 they produce additional custodial files, they'll add those  
25 search terms. So I think that that issue has been addressed.

1 JUDGE VANASKIE: Let me interrupt you for a second,  
2 Mr. Slater, just -- I'll turn to Mr. Goldberg then with respect  
3 to these matters.

4 Again, I'm going to work from Page 24 of the  
5 plaintiffs' letter. Where do things stand with respect to the  
6 production of custodial files for the parties to the July 27,  
7 2017, email, the individuals identified there on the top of  
8 Page 24?

9 MR. GOLDBERG: Your Honor, I'm going to invite my  
10 colleague, Jessica Priselac, who was on the call with  
11 plaintiffs to talk about that.

12 But before I do, Your Honor, you know, I just want to  
13 make sure Your Honor's clear about one thing that seems to be  
14 getting missed here, which is that the 2017 email that's being  
15 referred to has been in the production all along. This is not  
16 a document that appeared last week during the deposition of Mr.  
17 Li. This is a document that plaintiffs, had they been diligent  
18 and reviewed the documents months earlier, would have found.  
19 And the fact that it was produced demonstrates that the search  
20 terms work because there was a reference in an irbesartan  
21 document to valsartan, to nitrosamine. But to say that somehow  
22 -- to say that somehow or to suggest that this document has  
23 been withheld or hidden, this has been in the production and  
24 somehow ZHP is being forced to act as if there's urgency when  
25 this document has always been there.

1           Now, I will ask Ms. Priselac to address the issues on  
2 the custodians.

3           JUDGE VANASKIE: Thank you, Mr. Goldberg.

4           MS. PRISELAC: Thank you.

5           Your Honor, with respect to the new custodians,  
6 plaintiffs are correct that we still are objecting to the  
7 production of Maggie Kong; but to the other custodians, we have  
8 started the preliminary setup of a potential collection. The  
9 one issue we're having this week, which started last week, is  
10 that currently there is a Chinese national holiday. So our  
11 client is physically closed until May 6, but we'll be  
12 restarting, you know, those conversations and that collection  
13 when they reopen.

14           MR. GOLDBERG: Your Honor? Your Honor?

15           JUDGE VANASKIE: Yes.

16           MR. GOLDBERG: Ms. Priselac just reminded me of a key  
17 point. When Your Honor ruled that we would have a brief due on  
18 Monday, I was -- I had not remembered this Chinese holiday.  
19 And, of course, not only does our client have to be involved in  
20 that briefing, but the Hui Zhong law firm in China will too and  
21 they're going to be unavailable during this national holiday.  
22 So we would ask Your Honor to provide an additional week so  
23 that we can brief this issue because they will not be back in  
24 the office or the company won't be back into the facilities  
25 until a week from today.

1 JUDGE VANASKIE: I thought I heard May 6th but now  
2 you're saying it's May 10th that they won't be back in?

3 MR. GOLDBERG: They'll be back next -- they'll be back  
4 on Monday. So the holiday would be until Friday and then  
5 they'll be back in the office Monday. So we'll need the time  
6 to work with the Chinese to respond to the issue on Mr. Chen.

7 MR. SLATER: Your Honor, obviously, we object to this.  
8 This is ZHP's request to submit yet another brief on something  
9 that they filed last week where they had full access to this  
10 law firm.

11 And I'll say something else as to this Hui Zhong law  
12 firm. I haven't thought through the logistics of this but I  
13 think that law firm needs to make an appearance in this  
14 litigation, if they're the ones who are the -- are the  
15 doorkeepers to these documents. If we're going to start  
16 relying on this other law firm, I think they need to be within  
17 the jurisdiction of this Court and they need to have somebody  
18 who actually can appear *pro hac vice*. And, again, I haven't  
19 looked at the logistics of it, but I think the point has been  
20 reached with the gravity of what's going on that that law firm,  
21 it can't just be out in the weeds hanging out waiting to see  
22 what happens and doing what they want with impunity. If  
23 they're going -- if counsel of record is going to rely on that  
24 law firm, that law firm should be within the scope of this  
25 Court's authority.

1           And we don't agree that they should be able to say we  
2   want a brief and now we want to push it out another week  
3   because of another holiday. The levels of requests for us to  
4   continually accommodate the requests of ZHP, I think at this  
5   point it would be unreasonable.

6           JUDGE VANASKIE: Well, you know, I'm told that there  
7   is a Chinese holiday and that impacts the ability to respond.  
8   I'll extend the date for the brief from ZHP -- the brief on  
9   behalf of ZHP to May 14th, until Friday, May 14th, and I will  
10   give the plaintiffs then until Tuesday, May 17th, to respond to  
11   that.

12           As far as entry of appearance of this Chinese law  
13   firm, I don't know that I have the authority to compel that so  
14   we have to work through counsel of record here. All right.

15           And as far as these 16 items that appear starting at  
16   Page 24 of your letter, maybe I'll turn back to Ms. Priselac,  
17   is there agreement to run these additional search terms that is  
18   in Paragraph 3 of that --

19           MS. PRISELAC: Yes.

20           JUDGE VANASKIE: All right.

21           MS. PRISELAC: Yes, there is, Your Honor. And we  
22   actually, for Number 4, we suggested to add the TC-201729 as a  
23   search term and they agreed to do that as well.

24           JUDGE VANASKIE: Okay. I don't know if I need to go  
25   through this item by item, but what about the other items on

1 this list?

2 MS. PRISELAC: Your Honor, I think that we came to  
3 kind of modified agreements, and Mr. Slater can disagree with  
4 me, but my -- based on our conversation on Friday, we did come  
5 to somewhat modified agreements on the rest of these issues.  
6 Like, for example, for Number 12, we are not going -- we did  
7 not agree to give an accounting for all 81 custodians but they  
8 did ask for an accounting with respect to Min Li's devices, as  
9 well as Eric Gu's devices, and we agreed to give them that as a  
10 starting point with them reserving their rights.

11 MR. SLATER: That's our right.

12 MS. PRISELAC: So it's that type of modified agreement  
13 I'm talking about.

14 JUDGE VANASKIE: Okay. Is there any understanding  
15 about when this additional production will be made?

16 MS. PRISELAC: So, Your Honor, as you know, because  
17 you're very familiar with ESI, it's very hard for me to  
18 estimate today without a volume count. Once we do finish the  
19 collection -- you know, as soon as they get back into the  
20 office, we'll start collecting. Once we do have a actual  
21 volume count, I'm happy to report back to the Court our  
22 estimated timeframe for production. But I would hate to tell  
23 you something now with no volume information.

24 JUDGE VANASKIE: All right. And is that understood,  
25 Mr. Slater?

1           MR. SLATER: I understand that ZHP is going to tell us  
2 what their projections are and I think at that point we would  
3 comment on it. Our position's probably no surprise. We want  
4 to get these things as fast as we can because we're obviously  
5 under a time pressure as well, so we're just trying to do the  
6 best we can. You know, we're hopeful that the collection is  
7 going to happen promptly; but I guess when ZHP reports in in  
8 the next few days, then we can address it at that point.

9           JUDGE VANASKIE: But will ZHP be reporting in in the  
10 next few days or is this going to be delayed because of the  
11 Chinese holiday, May Day?

12           MS. PRISELAC: Well, right, going to my point, I think  
13 how we started this, Your Honor, is that we can't physically  
14 collect until they're physically back open. So I'm hoping at  
15 our next conference I can give you an update on where that  
16 stands. And I would hope to have a volume count within the  
17 next two weeks.

18           JUDGE VANASKIE: Okay. I guess that's the best we can  
19 do right now, given the circumstances.

20           Mr. Slater, is there anything else on your end with  
21 respect to discovery from ZHP?

22           MR. SLATER: You know, I think that we're going to  
23 need to confirm our agreements in writing and confirm them with  
24 the Court. I don't think -- whether we need to do it right now  
25 -- a lot of it's been addressed but we do want to make sure

1 these things are memorialized and that these agreements for  
2 what's going to be produced now and what we're deferring on,  
3 for example, we agreed, as counsel said, to the accounting of  
4 the Min Li and Eric Gu devices, but we did that without  
5 prejudice to our right to ask for more once we see what's  
6 there. We figured that's a reasonable first step because it  
7 could happen much more quickly.

8           As to the rest of the issues, I don't believe that we  
9 have final answers because they were going to get back to us.  
10 We're not -- it was not left Friday that it's going to take  
11 over two weeks to get back to us with a few of these bits of  
12 information. So we're certainly going to want to confirm  
13 exactly where we stand. You know, I would say by the end of  
14 the week we'd like to be able to be in a position to confirm  
15 this with the Court as to what's been resolved and what remains  
16 open so that we can then address those open items to the extent  
17 they exist. I think that's imperative that we don't let this  
18 get lost.

19           JUDGE VANASKIE: Ms. Priselac?

20           MS. PRISELAC: I'm happy to do that, Your Honor, and  
21 to confirm in writing so that we're all on the same page with  
22 respect to anything that's still in dispute by Friday.

23           JUDGE VANASKIE: All right. Very well. I agree with  
24 Mr. Slater that it is important that this be confirmed in  
25 writing so that there is no misunderstanding and you can set



1 forth your positions where there's disagreement so that I  
2 understand where the disagreement exists.

3 So what I would ask is a status report on this  
4 additional discovery by Friday of this week in writing from  
5 each side. Okay?

6 MR. SLATER: Yes, Your Honor.

7 MS. PRISELAC: Yes, Your Honor.

8 JUDGE VANASKIE: All right. Anything else, Mr.  
9 Slater, with respect to the ZHP discovery to be addressed  
10 today?

11 MR. SLATER: I don't think so, Your Honor. I think we  
12 have everything. We understand, we'll try to get that --  
13 whatever disputes remain, you'll know by Friday and anything  
14 that's agreed to you'll know by Friday. I think that works.

15 JUDGE VANASKIE: Okay. Very well.

16 Anything else, Mr. Goldberg, on ZHP's side?

17 MR. GOLDBERG: Not with respect to this discovery.  
18 And, Your Honor, we do have the request for the rescheduling of  
19 Mr. Chen's deposition. Is that something Your Honor is going  
20 to hold off until Your Honor sees the briefing on the custodial  
21 file?

22 JUDGE VANASKIE: Yes. I mean, I would like to keep  
23 that date on. I am not inclined to defer that deposition.

24 Are you going to move for a protective order with  
25 respect to Mr. Chen's deposition?

1 MR. GOLDBERG: Yes, Your Honor, we are. Judge  
2 Schneider granted us the right to do that and we think under  
3 the apex deposition doctrine that we satisfy the standard for  
4 apex -- for a protective order under that doctrine. When you  
5 consider all of the other deposition testimony that's going to  
6 be had by then, the likelihood of Mr. Chen providing unique  
7 information that couldn't be had from any other witness or any  
8 of the other 80 custodians warrants a protective order under  
9 that doctrine.

10 I know Your Honor's familiar with that doctrine  
11 because Your Honor ruled on it in this case, but this is a much  
12 different circumstance now that we've had the testimony of 17  
13 witnesses, including, by the end of the month, the  
14 second-highest official at ZHP who most certainly can answer  
15 the questions that would be asked of Mr. Chen.

16 JUDGE VANASKIE: So --

17 MR. SLATER: We have a very serious issue with saying  
18 that we're going to complete all the other depositions before  
19 their motion is due. The deposition's scheduled -- the only  
20 scheduling issue from plaintiffs' standpoint is it's scheduled  
21 to begin on Monday night of Memorial Day weekend. So we just  
22 suggested we -- I don't think anybody realized that when the  
23 date was selected -- we should move it a couple days. But the  
24 idea that all the depositions should be done and then the  
25 protective order briefing should start, it's going to

1 eventually push us to the point when -- yeah, you understand.  
2 We have expert reports to focus on at some point. They're due  
3 at the beginning of July.

4 MR. GOLDBERG: Your Honor, the schedule shouldn't --  
5 shouldn't preclude a party from having an opportunity to be  
6 heard fairly. There's not a trial in this case this year or  
7 next year, possibly not until the year after. We're asking for  
8 a two- or three-week rescheduling of a deposition so that we  
9 can include in the brief for the protective order the testimony  
10 of Mr. Du, which is scheduled for May 27th and 28th. There's  
11 going to be no prejudice to plaintiffs at all by a two- or  
12 three-week extension.

13 MR. SLATER: I'm sorry. Why do they need a deposition  
14 of their own witness? Can't they just submit an affidavit from  
15 him?

16 MR. GOLDBERG: Your Honor, the testimony --

17 JUDGE VANASKIE: Go ahead, Mr. Goldberg.

18 MR. GOLDBERG: I was going to say the testimony of Mr.  
19 Du will be further -- will further demonstrate that the  
20 questioning they could have asked of Mr. Chen they can ask of  
21 Mr. Du, and that his deposition, Mr. Chen's that is, is not  
22 going to be unique. There's no -- and that's the standard  
23 under the apex doctrine. And Judge Schneider explicitly  
24 ordered that we would be able to raise this argument.

25 JUDGE VANASKIE: When is Mr. Du's deposition?

1           MR. GOLDBERG: Mr. Du is May 27th and 28th. And we  
2 scheduled Mr. Chen for the following Monday simply to -- simply  
3 to accommodate the schedule that the Court has set, but no  
4 scheduling order should be so rigid as to prevent a party from  
5 raising a meritorious argument of real substance involving a  
6 CEO of a 7,000-employee company for a two- or three-week  
7 extension. We can include the testimony that's necessary for  
8 the brief.

9           MR. SLATER: I'll say it again, they can get an  
10 affidavit. He's their client. I don't understand why they  
11 need to depose him in order to get testimony. We know what  
12 the --

13           MR. GOLDBERG: We're not --

14           MR. SLATER: -- the testimony's going to say. It's  
15 not -- I don't believe it's going to actually change what the  
16 record is already, I don't see how it could, unless he's going  
17 to say he reads Mr. Chen's mind and knows everything Mr. Chen  
18 knows. I doubt we'll see that, so just get an affidavit.

19           JUDGE VANASKIE: I understand all of that. An  
20 affidavit may be procurable, but the point is that the  
21 questions you ask of Mr. Du, if he answers them, would show  
22 that Mr. Chen has nothing substantive to add. I understand the  
23 point Mr. Goldberg is making. On the other hand, I don't want  
24 to delay this until Mr. Du's deposition is taken. I don't see  
25 any problem with requiring that that motion for a protective

1 order get filed, we'll set up a briefing schedule that allows  
2 for supplementation of the presentation made to preclude Mr.  
3 Chen's deposition based upon the testimony of Mr. Du, but let's  
4 not wait to get this matter moving until Mr. Du's deposition is  
5 taken.

6 I understand, Mr. Goldberg, you're going to move  
7 regardless of what Mr. Du has to say in his deposition. So  
8 let's get that motion filed, start the briefing on it, we'll  
9 complete the briefing after Mr. Du's deposition.

10 Now, I know what that means and that means we're going  
11 to have to postpone Mr. Chen's deposition, but I'm not going to  
12 postpone it for more than a couple of weeks. If I were to  
13 grant -- if I were to allow you to defer filing that motion  
14 until after Mr. Du's deposition's taken, we won't have briefing  
15 on the motion completed until near the end of June. So, we'll  
16 -- I think you asked for Mr. Chen's deposition to be deferred  
17 until the week of June 21st. That's what we'll do. We'll  
18 defer that to the week of June 21st. But in the meantime, I  
19 expect -- and I'll set a schedule for the filing of this motion  
20 for a protective order because if you wait until after Mr. Du's  
21 deposition is taken, you're not going to have time to complete  
22 the briefing or the briefing -- won't give you adequate time to  
23 prepare the briefs.

24 So let's see, today is the 3rd of May. I'll direct  
25 that the filing -- the motion for a protective order be filed

1 by May 17th and we'll follow the ordinary briefing schedule on  
2 it. You can supplement it with Mr. Du's testimony, but it's  
3 not going to await Mr. Du's deposition.

4 And the deposition of Mr. Chen will not be taken prior  
5 to the week of June 21st to give adequate time to resolve this  
6 important issue.

7 Anything else on this issue?

8 MR. GOLDBERG: Nothing from ZHP, Your Honor.

9 MR. SLATER: Nothing from plaintiff, Your Honor.  
10 Thank you.

11 JUDGE VANASKIE: Thank you very much.

12 All right. I believe the next item on the plaintiffs'  
13 letter, since we're following that, would be the Aurobindo  
14 discovery status and the plaintiffs' request for sanctions.

15 Are you addressing this, Ms. Goldenberg?

16 MS. GOLDENBERG: Yes, Your Honor. Good morning.

17 JUDGE VANASKIE: All right.

18 MS. GOLDENBERG: So I think, Your Honor, the only item  
19 to be decided today, unless you actually wanted oral argument  
20 on the motion, and I don't think you do, is just when  
21 Aurobindo's response is due. And I'll just note that, you  
22 know, this is really an issue that the plaintiffs would like to  
23 get decided sooner rather than later because the prejudice is  
24 just compounding by the day.

25 In the last week, since our motion has been filed,

1 we've received 70,000 documents from -- from the various  
2 Aurobindo entities and just last night we got 700,000 pages  
3 from Aurobindo in India that haven't been ingested by our  
4 vendor yet. Now, some of this, we understand, is, of course,  
5 from custodians that were agreed to later in the litigation,  
6 but, you know, there was, at one point in time, a court order  
7 requiring Aurobindo to produce all of this by mid-March. We  
8 were flexible and offered a smaller extension to allow  
9 Aurobindo to produce some of this in early April, but here we  
10 are in May getting slammed with documents and we've already  
11 taken half the depositions that have been scheduled for these  
12 witnesses, we have a 30(b)(6) that's on the calendar for this  
13 week, and, you know, the documents that we got from the U.S.  
14 Aurobindo entities last week are for custodians who have  
15 already been deposed. So this just continues to be a problem  
16 that is very difficult for the plaintiffs to deal with.

17 JUDGE VANASKIE: All right. Ms. Heinz.

18 MS. HEINZ: Good morning, Your Honor.

19 JUDGE VANASKIE: Good morning.

20 MS. HEINZ: Yes, Marlene is correct, we're here to set  
21 the response deadline for Aurobindo's response to the  
22 plaintiffs' motion for sanctions.

23 I just want to real quick introduce my co-counsel  
24 who's joining me this morning, his name is John Lavelle of  
25 Morgan Lewis. I just wanted to introduce him to the Court.

1 MR. LAVELLE: Good morning, Your Honor.

2 JUDGE VANASKIE: Good morning.

3 MS. HEINZ: On the status of the document productions,  
4 I just wanted to give Your Honor a quick update.

5 We have reviewed the data that we received from the  
6 U.S. entities and we've produced all responsive data to the  
7 plaintiffs. That production is substantially complete.

8 On the India side, we have reviewed data from the 19  
9 custodians that we were -- that the Court ruled on back in the  
10 end of February. That data has been reviewed. We did make a  
11 production last night, a substantial production.

12 We have received and collected shared drive data from  
13 Aurobindo Pharma Limited that is still remaining to be reviewed  
14 and produced. I don't -- it's a large amount of data. I don't  
15 have -- it's in the process of being processed by our  
16 eDiscovery vendor. I don't have a number on how many it will  
17 be to review but I can provide that information. We're  
18 anticipating it will be finished processing later this week and  
19 I can provide the Court with an update on that.

20 But I can assure the Court that we are continuing to  
21 work, as I've said in prior conferences, as quickly as  
22 possible. We have finished the U.S. side. It's substantially  
23 complete. As for the APL custodians that we were ordered to  
24 produce on -- within the last two months, we have reviewed that  
25 data and produced all responsive data to the plaintiffs as of



1 last night.

2 JUDGE VANASKIE: Let me ask Ms. Heinz first, you had  
3 proposed a response date on this motion to strike Aurobindo's  
4 defenses of May 7, that's this Friday. Can you still meet that  
5 deadline?

6 MS. HEINZ: Yes, we can, Your Honor.

7 JUDGE VANASKIE: All right. So I will -- I will  
8 extend the date for the response to the motion to strike until  
9 May 7th.

10 How much time, Ms. Goldenberg, do you want for a  
11 reply?

12 MS. GOLDENBERG: Your Honor, I think if we could have  
13 until the -- I'm just looking at the status conference  
14 schedule. When would you like to hear the motion? I think we  
15 can work backwards from then.

16 JUDGE VANASKIE: Well, if we could hear it on May  
17 12th, that would be great.

18 MS. GOLDENBERG: Okay. That gives us -- well, their  
19 response is a Friday.

20 JUDGE VANASKIE: Right.

21 MS. GOLDENBERG: That's a Wednesday. If we could have  
22 until I guess the 11th, then we can get the -- we can get the  
23 reply brief on file.

24 JUDGE VANASKIE: Is that all right? I mean, you've  
25 given me a lot of paper here.

1 I wanted to ask you, Ms. Heinz, is there any need to  
2 extend the page limit for your response or can you get it  
3 within the page limit?

4 MS. HEINZ: I think we'll be able to do it within the  
5 page limit, Your Honor. I'm not anticipating any issues with  
6 that right now.

7 JUDGE VANASKIE: All right. We'll give you to May  
8 11th, then, Ms. Goldenberg, to respond to it, and we'll address  
9 it on May 12.

10 MS. GOLDENBERG: I appreciate that, Your Honor.

11 As far as the reply brief is concerned, I haven't  
12 looked at the local rules but I assume there's a page limit in  
13 there somewhere and I think we can meet it.

14 JUDGE VANASKIE: Yes. If you can't meet it, just make  
15 an appropriate request. All right?

16 Where do things stand with respect to the privilege  
17 log of Aurobindo?

18 MS. GOLDENBERG: Your Honor, before we move on from  
19 that --

20 JUDGE VANASKIE: Sure.

21 MS. GOLDENBERG: -- I did want to point out a couple  
22 of issues with things that Ms. Heinz just raised.

23 The first is that her statement that Aurobindo, the  
24 U.S. entities, are substantially complete in their production  
25 is still a problem for us because the noncustodial sources of

1 data have not been produced. We have data from the S: drive,  
2 according to their production log. What we don't have is data  
3 from every other shared source that their own witnesses  
4 identified in their depositions. And these shared sources of  
5 data have been identified in our agenda letter numerous times,  
6 but there are, to my understanding, numerous other drives that  
7 hold everything from scanned documents to -- you know, I think  
8 that there is an M: drive, an X: drive, a W: drive, I saw  
9 something referencing an N: drive in the database last night  
10 when I was looking through documents. And so if their position  
11 is we're substantially complete with only the S: drive being  
12 produced, we would ask that Aurobindo be ordered to go back and  
13 search other noncustodial sources of data for the U.S. entity;  
14 and for the foreign entity, we're asking that they be ordered  
15 to disclose to us which shared sources of data they are  
16 searching in India so that we can, you know, address any issues  
17 that we might have with that right away. So that's issue  
18 number one.

19 JUDGE VANASKIE: All right. Ms. Heinz.

20 MS. HEINZ: Your Honor, it's my understanding that  
21 Aurobindo has collected from all of the shared drives that its  
22 custodians use and has provided that data to us. We produced  
23 from the S: drive, we produced from Oracle, we produced from  
24 TrackWise, I believe we produced from -- I think the -- there  
25 was a Scan drive, and I can't remember if that was the X:

1 drive, it may have been, but all of that data has already been  
2 produced to the plaintiffs in our productions.

3 I can -- I'm happy to talk to Marlene after this phone  
4 call about anything else she believes may be outstanding. I'm  
5 not sure if I have specific information from her right now on  
6 this Zoom to respond fully to the best of my ability, but I am  
7 happy to work with her on what the shared drives from India  
8 that are being provided and provide an update to the Court at  
9 the next conference. And this is also something that is going  
10 to be addressed in our motion response as well, Your Honor.

11 JUDGE VANASKIE: All right. Ms. Goldenberg.

12 MS. GOLDENBERG: I'll have to see what we get and I  
13 guess we can talk about that again in two weeks. But it's hard  
14 to know what we're looking at if the production log isn't  
15 specifying any other sources. So we'll meet and confer after  
16 this and we can talk about it.

17 The other issue that I wanted to raise before we got  
18 to the privilege log is that a few weeks ago, I can't remember  
19 if it was two weeks ago or two weeks before that, Aurobindo was  
20 ordered by the Court to provide its document preservation  
21 policies. Ms. Heinz has identified for me certain standard  
22 operating procedures, but I have run those past our ESI team  
23 and they've told me that those are not the procedures that  
24 would indicate whether or not there is an auto delete policy  
25 for emails. I emailed Aurobindo last week and requested that

1 information and haven't heard back.

2 And so I guess, I don't know, we need a second court  
3 order because we still don't have them.

4 JUDGE VANASKIE: Ms. Heinz.

5 MS. HEINZ: Your Honor, the doc production policies  
6 are governed by the SOPs. Last week I sent Marlene a list of  
7 the Bates stamps for the standard operating procedures that we  
8 have produced. We've produced thousands of standard operating  
9 procedures, including these on the destruction policies -- I  
10 mean procedures -- I'm sorry, on the destruction of documents  
11 and retention of documents. They also have a corporate email  
12 policy, which I received from my client this morning, and I did  
13 send that to Marlene prior to the conference this morning  
14 letting her know that I will produce that formally under the  
15 ESI protocol later this week. I just wanted to get it to her  
16 as quickly as possible once I received it from my client.

17 JUDGE VANASKIE: Is there an auto delete policy?

18 MS. HEINZ: The only policies that I'm aware of are  
19 what's in that corporate email policy and -- and in the  
20 standard operating procedures that we've produced.

21 JUDGE VANASKIE: Ms. Goldenberg, it doesn't look like  
22 there's anything else I can do on this issue.

23 MS. GOLDENBERG: Yeah. I guess this is just another  
24 one where if they're telling us we truly have everything, then  
25 I'm not really sure where to go beyond that other than to say,

1 you know, our team -- and I don't know if Mr. Parekh is on  
2 because I know he's dealing with a power issue in California,  
3 but, you know, he and I spoke about this offline and he has  
4 told me that he's looked at a number of policies like this from  
5 different companies and these aren't it. But, you know, I  
6 guess if we need to put something more formally in writing in  
7 our next agenda letter, we can do that; but I'll just say that  
8 we remain concerned that we're not getting what was ordered  
9 previously.

10 JUDGE VANASKIE: All right. Very well.

11 Can we move to the privilege issue now?

12 MS. GOLDENBERG: Yes. So on -- sorry, Your Honor, go  
13 ahead.

14 JUDGE VANASKIE: No. I was going to ask, what are you  
15 asking me to do with respect to the privilege issue right now?

16 MS. GOLDENBERG: Well, Your Honor, I was hopeful today  
17 that we were going to be able to ask you for some rulings. You  
18 know, we got this privilege log from Aurobindo about a week and  
19 a half ago and as you saw in our agenda letter, it swelled from  
20 about 200 entries to about 3,500. We -- you know, I sent an  
21 email to Aurobindo promptly thereafter saying that there are a  
22 number of entries in here, including things that are named  
23 Valsartan Risk Assessment Report, that appear to be  
24 problematic. After that, they went through and de-designated  
25 probably about 90 percent of that log, which, again, is just

1 another piece of evidence that Aurobindo is holding things  
2 back, they're waiting to get caught, and they're only doing  
3 things when, you know, they get called on it. But, you know, I  
4 asked for an updated privilege log and what I got was, late  
5 last night, an email saying here is a sort of amended log,  
6 we're going to provide you with the formal one later; but  
7 because I don't have a formal amended log from them with the  
8 cast of characters, while I was hopeful that we would be in a  
9 position to ask Your Honor for some rulings today, I can't do  
10 that because I still don't have the information that I needed.

11 So, unfortunately, I think we're going to have to punt  
12 on this one also for a couple more weeks; but in the meantime,  
13 you know, we have more depositions on the calendar and this is  
14 tough.

15 JUDGE VANASKIE: Is there a problem, Ms. Heinz, with  
16 providing the cast of characters for the privilege logs?

17 MS. HEINZ: Your Honor, Marlene has been meeting and  
18 conferring with my colleague, Jill Fertel, who is on this Zoom  
19 and prepared to address this for Your Honor. I'm going to turn  
20 this over to her, if that's all right.

21 JUDGE VANASKIE: Very well.

22 MS. FERTEL: Good morning, Your Honor.

23 I don't have a problem providing an updated cast of  
24 characters. I have been working on it as recently as this  
25 morning.

1 I would take issue with Ms. Goldenberg's  
2 characterization of waiting to get caught by de-designating  
3 without any formal request by the plaintiffs. It was 2,913  
4 documents. This is without any request that any  
5 de-designations be made. I think that's inappropriate,  
6 inaccurate and verging on unprofessional, and I would just note  
7 that before addressing any other concerns.

8 I would also want to --

9 JUDGE VANASKIE: I will let you know that statements  
10 like that are like water off the back of a duck.

11 MS. FERTEL: Yes. But that being said, I'm working on  
12 producing an updated cast of characters. As counsel did  
13 indicate earlier this morning, there was a substantial document  
14 production last night, so that's going to automatically create  
15 the production of a new, updated privilege log and additional  
16 cast of characters. That's really the only thing that's stood  
17 in the way.

18 I'm happy to provide that information or as up to date  
19 if the Court would like. I have no problem producing it in  
20 piecemeal. I just thought it would be easier for all parties  
21 involved if it was done to incorporate the information that was  
22 produced in our document production last week on April 29th as  
23 well as our document production that was just made last night.  
24 That was my only concern, trying to make sure it was done in  
25 total instead of in piecemeal. But, again, I'm happy to



1 provide that information.

2 JUDGE VANASKIE: Well, Ms. Goldenberg, is it all right  
3 to get it piecemeal?

4 MS. GOLDENBERG: It is, Your Honor. We're happy to  
5 work through it as quickly as possible. And, you know, I'll  
6 note that what I've seen, I did go through their log last night  
7 and what they had sent me was a bunch of cells that had been  
8 turned black and then there were the remaining ones I think  
9 that are going to stay on the log, and most of the entries that  
10 are still in white appear to be things that are held back on  
11 the grounds of them being communications between regulatory  
12 consultants and the company. And so, you know, a lot of this I  
13 think may be solved by whatever ruling you have on the ToxRox  
14 and Meridan issue as well.

15 JUDGE VANASKIE: So get that ruling out, is that what  
16 you're suggesting?

17 MS. GOLDENBERG: I would never say that.

18 JUDGE VANASKIE: No. I want to get it out, believe  
19 me. All right.

20 Well, I'll ask that the cast of characters information  
21 be produced piecemeal so that work can be begun on an  
22 anticipated motion challenging the assertion of the privilege  
23 with respect -- or work product doctrine with respect to some  
24 of these documents, and I think that's all we can accomplish  
25 today, unless you think there's something else. I don't --

1 see, I guess I'm frustrated, Ms. Goldenberg, because I know  
2 you're looking for rulings and, obviously, ToxRox and Meridan  
3 is ready but nothing else is ready for a ruling from me as far  
4 as I can tell.

5 MS. GOLDENBERG: I think that's true, Your Honor.

6 JUDGE VANASKIE: All right. Anything else with  
7 respect to Aurobindo discovery?

8 MS. GOLDENBERG: Nothing at this time from plaintiff.

9 JUDGE VANASKIE: All right. The next item I have on  
10 the plaintiffs' agenda letter is the Hetero discovery dispute  
11 status. And I am not sure there's anything that needs to be  
12 decided or addressed today with respect to that. According to  
13 the letter that I received on the defense side, there's a few  
14 narrow and resolvable issues remaining.

15 Who will be addressing this issue?

16 MR. PAREKH: Good afternoon, Your Honor. This is --  
17 or good morning, I guess. This is Behram Parekh. I apologize  
18 for not being on video. Apparently, some car hit an electric  
19 pole outside my house and we have no electricity, so I  
20 apologize.

21 The only real issue -- this is just to sort of update  
22 the Court on the ongoing saga -- is that we had our first  
23 Hetero deposition last week and as part of the deposition we,  
24 again, identified additional documents where, you know, the  
25 witness said, oh, these documents should exist, this is where

1 they should be or, you know, these documents should be there  
2 and we don't have them, you know. And we've requested Hetero  
3 to give them to us and they've agreed to give them to us. It's  
4 just the ongoing sort of, you know, dribs and drabs of  
5 documents that we keep having to address is prejudicing our  
6 ability to appropriately complete the depositions on a timely  
7 basis.

8 JUDGE VANASKIE: All right. Who's addressing this  
9 issue on behalf of Hetero?

10 MR. ABRAHAM: Good morning, Your Honor. This is Eric  
11 Abraham. I'll be addressing this on behalf of Hetero.

12 JUDGE VANASKIE: Good morning, Mr. Abraham.

13 MR. ABRAHAM: We did conduct the first deposition of a  
14 Hetero 30(b)(6) witness on -- last week. There were some  
15 discrete documents that Mr. Slater requested during the  
16 deposition. We worked overnight and were able to provide most  
17 of those documents to Mr. Slater so that he could then examine  
18 the witness on the next day of testimony. So there was no  
19 prejudice. And it may be that many of those documents were  
20 included in Hetero Labs' original productions, but we decided  
21 in the interest of cooperating with plaintiffs to go to our  
22 client overnight and work through the overnight hours to  
23 procure additional copies of them for their review.

24 As I noted, it was the first of Hetero Labs' 30(b)(6)  
25 witnesses. We've made supplemental productions of additional

1 documents that Mr. Slater requested. He'll have the  
2 opportunity -- or I should say plaintiffs' counsel will have  
3 the opportunity to question our other 30(b)(6) witnesses about  
4 that deposition -- about those documents at subsequent  
5 depositions. So I highly doubt there will be any actual  
6 prejudice from this.

7 We did receive another email from Mr. Slater this  
8 morning identifying some additional documents or additional  
9 information he's looking for. We'll continue to diligently  
10 review it.

11 If Your Honor recalls when we left off last time,  
12 there was the issue of a disclosure that plaintiffs had  
13 identified in a letter back in January -- back in 2019 to the  
14 other defendants. We did provide the response setting forth  
15 all of that information, Your Honor. So we continue to  
16 diligently respond to plaintiffs' requests.

17 I'm not convinced that all of the documents that  
18 plaintiffs have requested, even in Mr. Slater's email this  
19 morning, were actually within their original document demands,  
20 but, nonetheless, we continue to cooperate because we  
21 understand that during depositions it may be that documents get  
22 identified or information gets identified that becomes  
23 relevant. We have no problem with that and we'll continue to  
24 work with plaintiffs to make those productions.

25 JUDGE VANASKIE: All right. Very well.

1           Where do things stand with respect to nonresponsive  
2 documents or documents that have been regarded as  
3 nonresponsive? Was an agreement reached on that issue?

4           MR. ABRAHAM: I'll ask Mr. Shah to address that mostly  
5 because that issue related to, in technical terms, what would  
6 be called metadata overlays, so I'm going to pass the baton to  
7 Mr. Shah to address that if that's acceptable.

8           JUDGE VANASKIE: That's fine.

9           MR. SHAH: Good morning, Your Honor. This is Nakul  
10 Shah on behalf of Hetero defendants.

11           I spoke with Mr. Parekh late last week regarding  
12 documents that were previously deemed nonresponsive which  
13 plaintiffs are requesting we produce as responsive. We are  
14 preparing that production presently with our ESI vendor and we  
15 anticipate those documents will be produced by the end of  
16 today.

17           JUDGE VANASKIE: Okay, great.

18           MR. SHAH: At the very latest it would be early  
19 tomorrow morning, but we are hoping to avoid that and provide  
20 those documents today.

21           JUDGE VANASKIE: Okay. Anything else on this issue  
22 from plaintiffs' perspective?

23           MR. PAREKH: Your Honor, just one sort of comment is,  
24 I understand Mr. Abraham worked overnight to produce, you know,  
25 documents. The one document they -- they produced two

1 documents, one of which was responsive, one of which was not.  
2 But, you know, for example, we had asked for all of the Unit V  
3 audit reports of Unit I and we received one audit report from  
4 the latter part of 2018 after the contamination had occurred.  
5 The witness had testified that Unit V did audits of Unit I at  
6 least every two years, and the SOPs also state that these  
7 audits happened approximately every two or three years and yet  
8 we still don't have the remaining audits of Unit I by Unit V.  
9 I mean, this is just one example. And the -- the problem  
10 becomes, you know, as we take these depositions, these are  
11 documents that we would be asking these witnesses about, I mean  
12 particularly audits of the API facility by the finished dose  
13 facility, which is what Unit I and Unit V are. Those audits  
14 are crucial. And these are fundamental core documents that we  
15 still don't have. And we didn't just identify these documents  
16 through the witness; we identified these documents weeks ago in  
17 letters when we looked at the SOPs and we still don't have  
18 them.

19 JUDGE VANASKIE: All right. Mr. Abraham?

20 MR. ABRAHAM: To the extent there are additional  
21 documents, we're continuing to search and continuing to provide  
22 them. As I noted, we've had one deposition so far of a  
23 30(b)(6) witness. There will be numerous other defendants'  
24 representatives that are deposed from both Unit I and Unit V  
25 and I'd be shocked if those depositions proceeded before we

1 were able to make additional productions that were relevant to  
2 them.

3 JUDGE VANASKIE: All right.

4 MR. ABRAHAM: I also indicated -- I also indicated to  
5 Mr. Slater last week during the deposition that if it turns out  
6 that there is some document that we produce that they would  
7 have used for an earlier witness but didn't get the opportunity  
8 to and won't have the opportunity because there are no  
9 additional relevant witnesses, we'll reproduce a witness. Not  
10 a problem.

11 JUDGE VANASKIE: All right. Anything else on this  
12 issue either Mr. Parekh or Mr. Slater?

13 MR. PAREKH: No, Your Honor. Thank you.

14 JUDGE VANASKIE: All right. Thank you very much.

15 The next issue I have is retailer discovery status.  
16 And this is just about, as I understand it, whether to  
17 negotiate with respect to three production requests. There's  
18 an agreement to negotiate with respect to the scope of seven or  
19 eight other production requests, but this one deals with  
20 Requests 1, 2 and 8.

21 And who will be addressing this issue on behalf of the  
22 plaintiffs?

23 MR. STANOCH: Good morning, Your Honor. David Stanoch  
24 on behalf of plaintiffs.

25 And Your Honor is exactly right. The narrow scope of

1 this issue, and, frankly, given how much effort the Court and  
2 the parties have put into this CMC so far, I don't think we  
3 need to reiterate what the two sides have put in their papers.

4           The only thing I'd mention, Judge, is just simply  
5 timing, which I'm sure you're aware. We've served all these  
6 draft requests December 8, 2020. Here we are May 5th and  
7 retailers are saying they don't even need to negotiate them.  
8 And to remind Your Honor the Phase II discovery is supposed to  
9 begin June 1, 2021, and complete October 4th, 2021. And under  
10 retailer defendants' own proposal for the briefing on the  
11 motion for leave to amend the master complaints, that briefing  
12 won't even be complete until sometime in August of 2021. So  
13 the idea that -- and then Judge Kugler, of course, has to issue  
14 a ruling. So we just think there's no reason to delay this  
15 further. We should go forward with at least negotiating it and  
16 then tee it up with Your Honor at the next CMC if there's a  
17 dispute about whether they have to be answered or in what form  
18 they need to be answered.

19           And I'm happy to answer questions, Judge.

20           JUDGE VANASKIE: I don't have any questions right now  
21 of you, Mr. Stanoch.

22           Who will be addressing this issue on behalf of  
23 retailer defendants?

24           MS. JOHNSTON: Good morning, Your Honor. Sarah  
25 Johnston on behalf of the pharmacies.



1           Your Honor, I think that Mr. Stanoch is correct in  
2   that the papers that we put in front of the Court are fairly  
3   sufficient for decision on this issue. I do think, however,  
4   that, you know, putting this dispute into context in terms of  
5   the overall case management schedule and the negotiations with  
6   plaintiffs and the pharmacies thus far is important because  
7   the -- while -- while it's true that we are talking about only  
8   a handful of the requests for production, we're talking about  
9   requests for production that seek to significantly expand the  
10  scope of discovery, including into presumably custodial  
11  discovery against the pharmacies for the first time, and those  
12  requests for production go almost exclusively to claims that  
13  are not live in the litigation against the pharmacies. They're  
14  claims that have been dismissed.

15           And so we understand what Mr. Stanoch is saying about  
16  timing and the concerns there; but in terms of even the ability  
17  to negotiate, we are put in a particularly challenging position  
18  because getting to an understanding on issues like  
19  proportionality, identification of custodians, et cetera, on  
20  these requests requires understanding what claims are actually  
21  going to be pursued against the pharmacies.

22           So I think that that -- not to belabor the positions  
23  that we've taken in our letter, the -- I would say the most  
24  crucial thing to -- for the Court to take away in considering  
25  this issue is the statement in our letter that, you know, the

1 claims against the pharmacies are shrinking and discovery  
2 should not be expanding, and that's what plaintiffs are seeking  
3 to do here. And because the -- the majority of the claims have  
4 been dismissed, because plaintiffs have sought leave but have  
5 not been granted leave to amend their complaints against the  
6 pharmacies, we are -- we find ourselves in a pretty challenging  
7 predicament to be able to actually negotiate what these  
8 requests ultimately look like. And that's -- that's the --  
9 that's the position that we've taken. And I think that setting  
10 aside the issue of the case management schedule, there is -- it  
11 is a position from a place of merit because we can't get to  
12 what the scope of a request like I think it's Number 8 that's,  
13 you know, all communications between every manufacturer or  
14 upstream supplier regarding valsartan, I mean, that's just a  
15 huge, huge discovery request to have to negotiate without  
16 understanding what specific claims those requests go to. And  
17 so that's where we find ourselves.

18 JUDGE VANASKIE: All right. Anything else on this  
19 issue, Mr. Stanoch?

20 MR. STANOCH: I could respond if Your Honor wants but  
21 I think we're sufficient here.

22 JUDGE VANASKIE: All right. Well, here's what I'm  
23 going to direct. I'm going to direct that you negotiate with  
24 respect to Requests For Production Number 1 and RFP Number 2,  
25 that is, the documents relating to manufacturers'

1 representations and warranties that were provided to the  
2 pharmacies or to the retailers, and the warranties provided by  
3 the pharmacies. That I think can go forward in terms of a  
4 negotiation, in terms of the scope of the request.

5 I am persuaded that it wouldn't be appropriate to  
6 require at this time the retailer defendants to negotiate with  
7 respect to a request for communications with the wholesalers  
8 and manufacturers concerning the purchase or recall of VCDs.  
9 And I think that has to await completion of the pleadings or at  
10 least an understanding of what the pleadings will allow. I am  
11 convinced that there -- the core production has been produced  
12 in this area and I am concerned with respect to the burden that  
13 it would produce. Not to say that it's out of the question  
14 down the road after the pleadings have been set, but at this  
15 point, I wouldn't require negotiation on that particular  
16 matter, especially because it would be opening up, as I  
17 understand it, additional custodian searches. All right? So  
18 that's what I'll ask you to negotiate. You've already agreed  
19 to negotiate all the other requests.

20 Timing.

21 MS. JOHNSTON: Yes, Your Honor.

22 JUDGE VANASKIE: How much time to negotiate so that  
23 you can get to a point where you have -- or where you have  
24 clear disagreement or you have agreement?

25 MR. STANOCH: Your Honor, again, David Stanoch.

1 I think that's a question maybe for Ms. Johnston  
2 because I think her side -- and she references this in their  
3 letter that they're getting back to us about certain policies  
4 about inventory management and things like that. It would be  
5 our preference, you know, give them a week or two to align on  
6 their side and then we have this teed up at the next CMC if  
7 there's any disputes, but I'll defer to Ms. Johnston.

8 MS. JOHNSTON: I think that that should be fine, Your  
9 Honor. I'm scrambling to find my calendar for the next CMC  
10 date so I can make sure that that's something that we can  
11 commit to. But I think that Mr. Stanoch's proposal makes sense  
12 and we can take the next two weeks to see if we can reach an  
13 agreement with the other pharmacies and then go back to  
14 plaintiffs.

15 JUDGE VANASKIE: So, Mr. Stanoch, so we are clear on  
16 this, you're talking about I think it's May 26th, we may have  
17 moved that date to May 27th, which is a Thursday, due to a  
18 conflict in schedule.

19 MR. STANOCH: That's fine, Your Honor.

20 JUDGE VANASKIE: All right. All right. I'll look for  
21 a report in advance of the May 27th -- I believe it's May 27th  
22 -- call on this -- on the CMC on this point. All right?

23 MR. STANOCH: Yes, Your Honor. Thank you.

24 MS. JOHNSTON: Yes, Your Honor. Thank you.

25 JUDGE VANASKIE: Thank you.

1           The next issue is the wholesaler discovery status. It  
2 looks like you're moving along but need deadlines on that.

3           Is this you again, Mr. Stanoch?

4           MR. STANOCH: It is, Your Honor. And you're correct.  
5 And given that we just said lingering disputes, if any, with  
6 the retailers submitted before the May 27th CMC, I propose we  
7 do the same thing with the wholesalers.

8           JUDGE VANASKIE: And who's speaking on behalf of the  
9 wholesalers?

10          MR. GEOPPINGER: Good morning, Your Honor. Jeff  
11 Geoppinger on behalf of the wholesalers.

12          That's fine by us. We will continue to negotiate. I  
13 think we're not too terribly far apart, and if there is  
14 anything outstanding, we'll submit it by the 27th.

15          JUDGE VANASKIE: Very well. Thank you.

16          MR. STANOCH: Thank you, Judge.

17          JUDGE VANASKIE: All right. The next item on the  
18 agenda letter deals with the briefing schedule on the motion to  
19 amend. And I am prepared to address this, if you are all  
20 prepared to address it with me.

21          MS. GOLDENBERG: Yes, Your Honor. This is Marlene  
22 Goldenberg and I think Sarah Johnston is going to handle this  
23 on behalf of the defendants, if she's still around. Or you can  
24 just tell us --

25          MS. JOHNSTON: I am. I am here.

1 JUDGE VANASKIE: All right. You've laid out your  
2 positions in the -- in the agenda letter. Is there anything  
3 else you wanted to add with respect to that?

4 MS. GOLDENBERG: I think our position's pretty clear.  
5 You know, we'll live with whatever ruling Your Honor gives us,  
6 but we respectfully would just appreciate the time to deal with  
7 our expert reports and then move on to this.

8 JUDGE VANASKIE: All right. Well, Ms. Johnston?

9 MS. JOHNSTON: Yes, Your Honor, just briefly. I think  
10 that, yes, our position is laid out in our papers. Given the  
11 issues that we've just discussed, we, on the defense side,  
12 proposed a shorter period so that we can get to a decision  
13 point on where the pleadings stand sooner than later.

14 Additionally, the -- the fact that there are as many  
15 issues as there are to address in the six different motion to  
16 dismiss orders that are specific and unique to the pharmacy  
17 defendants, we have asked for a -- I think an additional ten  
18 pages from the page allocation permitted by the local rules as  
19 well as the opportunity to come back and address any lingering  
20 issues raised by plaintiffs via surreply.

21 JUDGE VANASKIE: Yes, I've looked at the letter briefs  
22 and I'm going to adopt the schedule that's been proposed on the  
23 defense side with respect to the motions to amend. The  
24 defendants' response will be due May 27th. The pharmacy  
25 defendants will be granted the additional ten pages to take it

1 to 50 pages. Plaintiffs' reply brief would be due July 12th of  
2 2021. While I am no fan of surreply briefs, I will grant the  
3 defendants the right to file a surreply brief no later than  
4 August 2, 2021. So we'll issue an order to that effect.

5 MS. GOLDENBERG: Your Honor, I just wanted to clarify  
6 if the retailer defendants are going to get the extra ten  
7 pages, I don't know if we'll need it but could we give  
8 plaintiffs the same page limits that defendants have for their  
9 brief?

10 JUDGE VANASKIE: Certainly.

11 MS. GOLDENBERG: Thank you.

12 JUDGE VANASKIE: Okay.

13 MS. JOHNSTON: Thank you, Your Honor.

14 JUDGE VANASKIE: All right. I had wanted to ask a  
15 question with respect to the motion to seal, at least one  
16 question, and that deals with the fact that some of the  
17 documents that are covered by the motion to seal are the  
18 unredacted -- unredacted parts of FDA reports, as I understand  
19 it, and I'm having trouble understanding why they should be  
20 sealed. If it's --

21 MR. GOLDBERG: Your Honor, this is Seth Goldberg and I  
22 am going to pass this to my colleague, Kelly Bonner, who I  
23 think is on the screen to address this.

24 JUDGE VANASKIE: All right. Very well. Ms. Bonner.

25 MS. BONNER: Good morning, Your Honor.

1           We've described the FDA inspection reports as Category  
2 2 documents, the FDA establishment and collection reports which  
3 evaluate the FDA -- the ZHP parties' facilities readiness to  
4 commercially manufacture numerous APIs and drug products. Many  
5 of those drug products were not sold in the United States nor  
6 are at issue in this litigation. Given how comprehensive the  
7 FDA inspection reports are, allowing them to be disclosed would  
8 be tantamount to turning over a guidebook of the ZHP parties'  
9 operations of their manufacturing facilities to the ZHP  
10 parties' competitors, many of whom are defendants in this  
11 litigation.

12           JUDGE VANASKIE: I guess what I'm having a little  
13 trouble understanding, Ms. Bonner, is if we're only talking  
14 about the unredacted parts of the FDA reports which could be  
15 obtained by way of a FOIA request, why should they get sealed  
16 in this case?

17           MS. BONNER: Again, Your Honor, you know, we are happy  
18 to discuss with plaintiffs what parts of those documents would  
19 be subject to a FOIA request. Obviously, that would be up to  
20 plaintiffs to go and make that FOIA request, which is something  
21 that -- and then it would be on the FDA to review the documents  
22 before disclosing them. We can't substitute our judgment for  
23 the FDA. For now our position is that they contain our  
24 information.

25           JUDGE VANASKIE: Well, who will be addressing this



1 issue on behalf of plaintiffs?

2 MR. SLATER: I will, Your Honor. Adam Slater.

3 JUDGE VANASKIE: All right, Mr. Slater, as I  
4 understand it, we're talking about documents that have been  
5 attached primarily as exhibits to agenda letters that have  
6 already been redacted by the FDA. Am I wrong in my  
7 understanding there?

8 MR. SLATER: No. You're correct, Your Honor. And we  
9 can't fathom a reason why those documents would be maintained  
10 as confidential under the law. Counsel's argument is, well,  
11 it's our internal information but as the courts have repeatedly  
12 recognized and has been recognized in this litigation, that's  
13 not a basis under which something can be held from public view  
14 as confidential. To us, it's a very straightforward argument.  
15 We're not really understanding where ZHP is coming from in  
16 terms of satisfying the standard. It doesn't come close.

17 JUDGE VANASKIE: Ms. Bonner.

18 MS. BONNER: Again, Your Honor, even when these  
19 documents are ultimately produced by the FDA, they are often  
20 redacted. That is the FDA's position to redact them. Our  
21 position is that these documents, in their whole, they are the  
22 inspection reports of the ZHP parties' manufacturing  
23 facilities. They provide a comprehensive overview of those  
24 facilities. Now, if the FDA chooses to redact them, plaintiffs  
25 can -- plaintiffs can request the -- they can submit a FOIA

1 request and they can request the documents and see what's been  
2 redacted, what hasn't been. But it's not our place to  
3 substitute our judgment for the FDA's.

4 JUDGE VANASKIE: Right. I think maybe I'm missing  
5 something here because we're only talking about the  
6 unredacted -- or only talking about, yes, the unredacted parts  
7 of the FDA reports that have been provided as attachments  
8 either to a motion or to an agenda letter, and I'm -- Ms.  
9 Bonner, we're not talking about -- and correct me if I'm wrong,  
10 Mr. Slater, are you seeking to unseal the entire report or just  
11 that part of the report that has been presented to the Court  
12 either in the agenda letter or as part of a motion?

13 MR. SLATER: Just the document as it appears as it was  
14 submitted to Your Honor. We're not trying to peel back the  
15 redactions at this point. And, again, this is -- I get that  
16 ZHP says, well, this is going to disclose internal information,  
17 but of course it's going to. That's the nature of these  
18 requests. And this information is clearly material. It goes  
19 to how this contamination occurred in detail and that's  
20 something that falls in the most presumptively public category.  
21 So we just don't really understand their argument. Certainly,  
22 it's not up to the FDA. These are documents that ZHP has,  
23 they've produced to us, and there's no reason why we should  
24 have to go through the burdens of the sealing or the  
25 confidentiality any further.

1 JUDGE VANASKIE: Ms. Bonner?

2 MS. BONNER: If I may, Your Honor?

3 JUDGE VANASKIE: Certainly.

4 MS. BONNER: These documents were produced pursuant to  
5 the confidentiality order which was negotiated between the  
6 parties. The protective order represents the parties' joint  
7 efforts to address the volume of confidential information that  
8 had to be necessarily exchanged as part of this litigation.

9 Now, as for what portion of the document is being --  
10 is being contested, our understanding is that plaintiffs  
11 have -- would like to unseal all of -- the entire portion of  
12 the documents. So that document is fair game, available on a  
13 public docket. If the -- you know, if plaintiffs are willing  
14 to meet and confer about whether some portion of that document  
15 can be made publicly available, you know, we're happy to  
16 discuss that and propose redactions that protect ZHP. You  
17 know, we're happy to reach a compromise on this issue.  
18 However, our understanding is they wanted the entire document  
19 out in available public and said that there was no basis for us  
20 to keep it sealed. Obviously, we disagree with that point. We  
21 think that there was a very, very valid basis for requesting  
22 that this document not be disclosed to the public, specifically  
23 that this document deals -- that these documents deal largely  
24 with drugs that were not sold in the United States, that are  
25 not at issue in this litigation and that are not relevant to

1 plaintiffs' case.

2 JUDGE VANASKIE: Well, if it's a document that the FDA  
3 has produced pursuant to a FOIA request and redacted what it  
4 considered to be information that is not subject to disclosure  
5 under FOIA, then I think the documents should not be sealed as  
6 part of the court record in this matter. I can't imagine that  
7 if I am a member of the public and I could obtain what's been  
8 presented to the Court, that the Court should then seal that  
9 document. And so I think you can anticipate that's going to be  
10 my ruling.

11 MS. BONNER: Okay.

12 JUDGE VANASKIE: I've looked at that. And also  
13 because they've been presented to the Court, there is a  
14 presumption of access to the records. So I am not going to  
15 seal something that the FDA has produced pursuant to a FOIA  
16 request. It's just simply not going to happen.

17 There are rules that deal with protecting proprietary  
18 information under FOIA and I'm presuming those rules have been  
19 applied and if you've obtained this document as a public record  
20 from FOIA -- from a FOIA request from the FDA, then I think it  
21 should not be sealed as part of the court record, especially  
22 when it has been presented to the Court as part of the court  
23 record. All right. So that's the ruling that will be coming  
24 out on that issue, and we will move forward on that.

25 MS. BONNER: Thank you, Your Honor.

1 JUDGE VANASKIE: I know we've been going quite some  
2 time but I did want to address -- I'm doing this with great  
3 trepidation -- the motion for a protective order on the  
4 translation issue.

5 Not to make light of it at all, I know it's a very  
6 serious issue, but it's one that we've addressed now several  
7 times and it seems to me it goes back to the initial  
8 determination made by Judge Schneider not to require  
9 translations of documents with respect to the depositions. I  
10 tried to resolve this issue in a compromised fashion by saying  
11 use machine translations to facilitate the conduct of  
12 depositions. It turns out that reversal may not be all that  
13 accurate and it's understandable because of the technical  
14 nature of the documents. But -- and I know -- I just want to  
15 pull up the request that's been made here and that's that I  
16 should enter a protective order allowing ZHP party witnesses  
17 who do not speak English to refrain from answering questions  
18 based on documents written in English and not accompanied with  
19 an accurate and complete translation in Chinese. That's what  
20 the request is as I understand it.

21 Is there anything else you wanted to add with respect  
22 to this matter, Mr. Goldberg?

23 MR. GOLDBERG: Your Honor, the issue -- a few points.  
24 The issue was not resolved by Judge Schneider in the way that  
25 it's being addressed now, and we've covered this with Your

1 Honor.

2 JUDGE VANASKIE: Right.

3 MR. GOLDBERG: What Your Honor -- and it's on Page 1  
4 -- sorry, Your Honor. It's on Page -- too many things open  
5 here. It's on Page 127 of the Court's -- of the transcript  
6 from November 24th.

7 JUDGE VANASKIE: Right.

8 MR. GOLDBERG: The issue that Your Honor dealt with  
9 was whether to order plaintiffs to present to the defendants  
10 before the depositions translated copies of the documents they  
11 intended to use. What we had proposed that they would do that  
12 within 30 days of a deposition to allow the parties time to  
13 exchange translations so that when we got to a deposition, the  
14 witness was testifying on documents that were accurate  
15 translations that could be certified for use in trial.  
16 Plaintiffs' argument was they did not want to reveal their work  
17 product before a deposition. And Judge Schneider found that to  
18 be compelling. What he said was, "I'm not going to order  
19 plaintiffs to reveal work product before the deposition. We're  
20 going to leave for another day and not include in the order a  
21 provision about how to count time. If it's a problem, you'll  
22 deal with it -- the Court will deal with it at the appropriate  
23 time but I think it's an issue better left for the future." So  
24 that's where we are now.

25 A salient point about where plaintiffs were with this

1 issue and are with this issue and where Judge Schneider was is  
2 that plaintiffs are putting the element of surprise ahead of  
3 the fairness to the witness. What that means is plaintiffs did  
4 not want to disclose their work product because they didn't  
5 want defense counsel to be able to be prepared ahead of a  
6 deposition, so that they couldn't prep their witnesses ahead of  
7 the deposition. And so they said it's work product, we  
8 shouldn't have to have a pre-deposition exchange. But  
9 discovery isn't about the element of surprise. And so what  
10 they've now been able to do or what they chose to do is not  
11 have a system by way -- by which these documents could be  
12 addressed before a deposition.

13 Judge Schneider could have done this differently. He  
14 could have found a third party that would accept the  
15 translations of each side and determine which one should be  
16 used at the deposition. Judge Schneider's ruling really didn't  
17 address the fairness to the witness of being able to read a  
18 document. Your Honor has addressed that. Your Honor has  
19 already determined that it's a matter of due process and equal  
20 protection that a witness who does not speak English should be  
21 treated as if -- as a witness who does speak English. And by  
22 allowing plaintiffs to take testimony on documents witnesses  
23 cannot read is a violation of due process and equal protection.

24 We have provided numerous examples of unintelligible  
25 translations, of instances where the witnesses were confused

1 and instances where plaintiffs' counsel are telling the  
2 witnesses do not rely on the translations. It could not have  
3 been the intent of Your Honor to have plaintiffs present  
4 translation -- translated documents that are then pulled out of  
5 consideration by the witness because they are unintelligible.  
6 The Court simply could not have ordered, provide translations  
7 but they can be translations that are meaningless. Incomplete  
8 and inaccurate translations are the effect of no translation at  
9 all. And what our request is is that if they are going to show  
10 a witness a document the witness can't read that the witness be  
11 able to say, I can't read the document, I can't answer your  
12 question. That's fair. But a witness should not be compelled  
13 to answer a question about what a document says if the witness  
14 cannot read it.

15           Plaintiffs can provide manual translations for these  
16 documents.

17           And let's be clear about burden for a second. We  
18 already showed you a chart today. Of the 11 depositions,  
19 plaintiffs have only showed 338 exhibits and probably less than  
20 a third of those have been documents that required translation.  
21 We're not talking about a burden on plaintiffs to translate the  
22 documents they want to use. But Your Honor did not order  
23 machine translations that are unintelligible.

24           And so we would respectfully request that if a witness  
25 is presented with a document the witness cannot read that the



1 witness be permitted to say, I can't read the document, and  
2 that's -- and that's the admissible evidence. That's the  
3 answer. But to have a witness speculate is not what -- that's  
4 exactly what the Rules of Evidence do not permit. And there  
5 are admissibility problems with all of the testimony that's  
6 been drawn on these documents that are inaccurate and  
7 unintelligible.

8           So if Your Honor wants to have a record of admissible  
9 evidence, it has to be of witnesses who answer about the  
10 documents they can read or answer truthfully about when they  
11 can't read a document.

12           JUDGE VANASKIE: All right. Mr. Slater.

13           MR. SLATER: Thank you, Your Honor.

14           I'm having a strong sense of déjà vu because we've  
15 argued this issue multiple times with Your Honor. You've heard  
16 these arguments and there's nothing new here.

17           Your Honor ruled on this. You made what I think Mr.  
18 Goldberg termed in one of the transcripts, he said, "It's a  
19 compromise. Maybe it's imperfect but it's the best we can do."  
20 He made that comment in the context of my argument in  
21 opposition to what Your Honor ruled. So I'm in the strange  
22 situation of watching my adversary argue against a ruling that  
23 my adversary obtained over my objection where I said very  
24 clearly, look, the machine translations are imperfect,  
25 especially with formatting issues, and ZHP said, that's fine,

1 we want you to get us the machine translation to help us; so we  
2 complied with Your Honor's order. They're now asking for a new  
3 order when we're almost at the end of the depositions and, you  
4 know, our bottom line is we think that there should be no  
5 change. The motion for the protective order, which would be a  
6 drastic ruling with -- imagine us arguing about what an  
7 accurate and complete translation means. As we laid out, you  
8 don't have any instances cited to by the defense where the  
9 actual meaning of a document's been misrepresented or unfairly  
10 presented, and in every case there is a translator of record  
11 retained by ZHP who's available to clarify anything counsel  
12 wants clarified. Counsel sees the documents. There's nobody  
13 being stopped from preparing. They're their documents. They  
14 can prepare their witnesses as they deem fit.

15 So there's been no sign of any unfairness, we've  
16 abided by Your Honor's ruling to the T, and we just ask this  
17 motion be completely denied.

18 Thank you.

19 JUDGE VANASKIE: All right. Mr. Goldberg.

20 MR. GOLDBERG: Your Honor, Your Honor, it is a matter  
21 of inherent unfairness, and Your Honor has already made that  
22 determination. Your Honor said that Your Honor is extremely  
23 sensitive to a witness who doesn't speak English being asked  
24 questions about documents that are only in English that the  
25 witness doesn't have an opportunity to review. Your Honor

1 noted it is standard practice when you're dealing with a single  
2 language to give the witness an opportunity to review the  
3 document. That opportunity is not being afforded under these  
4 circumstances. Your Honor said there needs to be a way to make  
5 sure that these witnesses are being essentially in the  
6 equivalent position as if they spoke the language in which the  
7 document they're being questioned on is written. And that's  
8 not happening.

9 Plaintiffs cannot seriously be asking Your Honor to  
10 enforce an order that presents documents to a witness that the  
11 witness cannot read and that are unintelligible. Your Honor  
12 could not have envisioned that that was what the order would  
13 be. We certainly did not accept that that's what would happen.  
14 We did not propose to have unintelligible documents be shown to  
15 a witness. We have been consistent on this point since the  
16 moment it arose in the first deposition that it is inherently  
17 unfair to show a witness a document the witness can't read.  
18 That unfairness is not cured by showing the witness a  
19 translation that is unintelligible, incomplete and inaccurate.

20 JUDGE VANASKIE: All right. We're far along the road  
21 here with respect to depositions. I am going to deny the  
22 motion for a protective order. I'm going to deny it because I  
23 never ruled that as a matter of due process or equal protection  
24 the party taking a deposition is required to provide certified  
25 translations of that document before questioning the witness.

1 I've scoured the case law and did not find any case that  
2 supports this. I looked at every case that ZHP cited in  
3 support of this request for a protective order and none dealt  
4 with the requirement that a certified translation of a document  
5 be provided to a witness. They dealt with contexts,  
6 particularly the immigration contexts where a hearing hasn't  
7 been held and a decision made on the basis of unreliable  
8 evidence, but the key distinction here is that decisions aren't  
9 being made on the basis of unreliable information, unreliable  
10 translations.

11 ZHP, the party in this case, will have the right and  
12 the ability to question plaintiffs' use of testimony that may  
13 have been based upon an unreliable translation by making the  
14 appropriate record. Plaintiffs proceed at their peril in  
15 asking questions of witnesses with respect to documents shown  
16 to have an unreliable translation.

17 One of the cases that Mr. Goldberg cited dealt with  
18 the Court reversing its decision on summary judgment when it  
19 was shown that the translation was not necessarily reliable.

20 So I don't see any due process problem here with  
21 respect to the party, that is ZHP, having the ability to  
22 contest evidence that's garnered during deposition that then  
23 may be presented to the Court for a decision either by way of  
24 summary judgment or on some other matter. But I am not going  
25 to require that there first be presented a certified

1 translation of a document before it is used at a deposition and  
2 I am not going to say that a deponent may refuse to answer a  
3 question because they have not been provided with a certified  
4 translation.

5 I expect that I will supplement this determination  
6 with a written ruling, but I wanted you to be clear going  
7 forward, because there are some depositions that need to be  
8 taken, that I am not going to grant -- that I am denying the  
9 motion for a protective order. All right?

10 Is there anything else that we need to address at this  
11 time?

12 MR. SLATER: I don't believe so for plaintiffs, unless  
13 any other plaintiff attorney thinks there's an issue we've  
14 missed. I don't believe there are any others.

15 JUDGE VANASKIE: All right. On the defense side?

16 MR. GOLDBERG: Nothing from defendants, Your Honor.

17 JUDGE VANASKIE: All right. Very well.

18 Larry, are you there? I guess we're going to call --  
19 are we going to call into Judge MacStravic -- or Judge Kugler  
20 now?

21 THE COURTROOM DEPUTY: Judge, I will start the  
22 telephone conference and you can call in there.

23 Do you need to confer with Judge Kugler?

24 JUDGE VANASKIE: I don't need to confer with Judge  
25 Kugler. But if you could give me the dial-in information, that

1 will be helpful.

2 THE COURTROOM DEPUTY: 877-336-1828. And the Access  
3 Number is 7684579.

4 JUDGE VANASKIE: All right. Very well. So we will  
5 all be leaving this Zoom session and dialing into that number  
6 and picking up with Judge Kugler. All right.

7 MR. GOLDBERG: Thank you, Your Honor.

8 MR. SLATER: Thank you, Your Honor.

9 JUDGE VANASKIE: All right. Thank you.

10 (Proceedings adjourned at 12:13 p.m.)

11 - - - - -

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13

14

15 I certify that the foregoing is a correct transcript  
16 from the record of proceedings in the above-entitled matter.

17

18 /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR  
19 Court Reporter/Transcriber

20 05/04/2021  
21 Date

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